

# Draft National Policy Statement for Ports



November 2009



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Presented to Parliament pursuant to section 5(9b) of the  
Planning Act 2008

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ISBN: 9780108508646

Printed in the UK for The Stationery Office Limited  
on behalf of the Controller of Her Majesty's Stationery Office

ID 2333522 11/09

Printed on paper containing 75% recycled fibre content minimum.

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# 1 Policy on Planning for Ports

## 1.1 Introduction

**1.1.1** Throughout history, British sea ports have developed, thrived and changed, supporting the free movement of people, and the trade in goods and commodities which is the basis for our national prosperity. As travel and trade have changed over time, and as ships and their cargoes have developed in size, character and technology, so the nature and the distribution of ports around our coasts and rivers has altered, creating new opportunities for local, regional and national growth.

**1.1.2** Many of the changes have been unpredictable. But there are some constants. The need for safe harbours, with built defences interacting with and changing the natural environment. The need for unimpeded access with water deep enough for the largest vessels expected to use the port requiring dredging on the sea bed. The risks of noise, dirt and danger associated with loading and unloading cargoes. And the impacts on our transport networks of the inland movement of goods to and from ports by road or rail.

**1.1.3** The planning system is a key to the future sustainable development of ports. The improvements introduced through the Planning Act 2008 and the Marine and Coastal Access Bill now passing through Parliament will strengthen the system, making it more transparent, and offering greater certainty both to those who propose new developments, and to people who wish to make representations on those proposals.

## 1.2 Role of this National Policy Statement in the Planning System

**1.2.1** This statement is part of the new planning system. It is a National Policy Statement (NPS) and provides the framework for future decisions on proposals for new port development to be taken by the Infrastructure Planning Commission (IPC) established under the 2008 Act to deal with

nationally significant infrastructure proposals<sup>1</sup>; it may also be a relevant consideration for the Marine Management Organisation proposed in the Marine and Coastal Access Bill which will in future decide other port development proposals. It applies, wherever relevant, to associated development, such as road and rail links, for which consent is sought alongside that for the principal development. Non-ports associated development should be considered on a case-by-case basis, using appropriate assessment methods consistent with this NPS and with applicable official guidance.

**1.2.2** The NPS sets out the Government's conclusions on the need for new port infrastructure, considering the current place of ports in the national economy, the available evidence on future demand, and the options for meeting future needs. It explains to planning decision-makers the approach they should take to proposals, including the main issues which, in the Government's view, will need to be addressed to ensure that future development is fully sustainable, and the weight to be given to the need for new port infrastructure and to the positive and negative impacts it may bring.

**1.2.3** The IPC must decide an application for ports infrastructure in accordance with this NPS unless it is satisfied that to do so would:

- lead to the UK being in breach of its international obligations;
- be in breach of any statutory duty that applies to the IPC;
- be unlawful;
- result in adverse impacts of the development outweighing its benefits;
- be contrary to regulations about how the decisions are to be taken<sup>2</sup>.

**1.2.4** The Department for Communities and Local Government has issued guidance on the role and operation of the IPC<sup>3</sup>.

### **1.3 Duration**

**1.3.1** The NPS will remain in place until it is withdrawn, amended or replaced. It will be reviewed, in accordance with the Act, when the Secretary of State considers it appropriate to do so. When considering whether to review the NPS, the Secretary of State will look at whether there has been a significant change in any circumstances on which the policy was

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1 Applications for development consent will be referred to the IPC if the estimated incremental annual capacity exceeds:

- 0.5 million teu<sup>1</sup> for a container terminal;
- 250,000 movements for roll-on roll off (ro-ro);
- 5 million tonnes for other (bulk and general) traffic,
- or a weighted sum exceeding these figures taken together.

The Secretary of State may also refer to the IPC an application with capacity below the relevant threshold, if he considers that the project is of national significance (s.35 of the Act).

2 s.104 Planning Act 2008.

3 [www.planningportal.gov.uk/england/government/news/archive/2009/sep/2009-09-Week-2/suiteofipc](http://www.planningportal.gov.uk/england/government/news/archive/2009/sep/2009-09-Week-2/suiteofipc)



based, and whether such change was anticipated when the NPS was designated.

#### **1.4 Power of intervention**

- 1.4.1** Where there has been a material change in circumstances which necessitates the review of the NPS, in whole or in part, and it is in the national interest that a case should be decided quickly, the Secretary of State has a reserve power<sup>4</sup> to intervene and take the decision, ensuring that proposals for nationally significant infrastructure can be considered without delay.

#### **1.5 Territorial extent**

- 1.5.1** This NPS covers England and Wales.
- 1.5.2** The Scottish Executive has devolved responsibilities for ports, and has developed its own ports policy under the Scottish National Transport Strategy. Ports policy in Northern Ireland is also devolved. Statistical material, including forecasts of port freight traffic, covers Scotland and Northern Ireland as well as England and Wales, and helps to inform ports policy there. The Channel Islands and dependent territories operate their own ports policies and are not covered in the forecasts.
- 1.5.3** Any reference below to the United Kingdom (UK) or Great Britain should be read as without prejudice to the devolved authority of the Scottish Executive, the Northern Ireland Assembly and dependent territories in ports matters.

#### **1.6 Applications relating to Wales**

- 1.6.1** As noted above, this NPS covers England and Wales, reflecting the fact that ports policy for Wales, other than for small fisheries harbours, is reserved to the UK Government.
- 1.6.2** The Welsh Assembly Government is however responsible for many related functions, including transport and land use planning. In considering any applications relating to Wales, the decision maker may additionally need to take account of the Welsh Assembly Government's policies and plans in these areas. The key documents are the Wales Spatial Plan, the Wales Transport Strategy, the National Transport Plan and the four Regional Transport Plans due to be published later in 2009, Planning Policy Wales 2002 and Technical Advice Note 18: Transport.

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4 Part 6 Chapter 7 Planning Act 2008

## **1.7 Appraisal of Sustainability**

**1.7.1** The appraisal of the sustainability of the policy set out in this NPS can be found on the DfT website. This describes analysis of policy alternatives, supporting the broad approach in the NPS, and assesses how the policies set out in the NPS will ensure that consented applications will satisfy the requirements for sustainable developments.

**1.7.2** It incorporates a Strategic Environmental Assessment (pursuant to Directive 2001/42/EC as transposed by SI 2004/1633<sup>5</sup>) in so far as relevant to a policy statement of this nature.

## **1.8 The essential role of ports in the UK economy**

**1.8.1** Until the second half of the 20th century, all movements of people and goods into and out of Britain were by sea, through our ports and harbours with cargoes being unloaded largely by hand. The last 50 years have however seen major changes in several areas.

**1.8.2** The development of air transport has brought radical change in international travel to and from the UK. Now nearly seven times as many visits abroad by UK residents are by air rather than by sea<sup>6</sup>. The opening of the Channel Tunnel also created alternatives for people travelling abroad by rail or car. Overall in 2008, UK airports handled 190 million passengers travelling on international flights and there were a further 16 million passenger journeys through the Channel Tunnel<sup>7</sup>. International sea passengers continue to represent a significant proportion with 24 million travelling to and from UK ports in 2008<sup>8</sup>.

**1.8.3 Freight and bulk movements.** Fifty years ago, many cargoes were still loaded and unloaded individually. Most of our goods now arrive in trucks and trailers which roll on and off ('ro-ro'), or in large containers. Specialised equipment at terminals conveys grain and other dry goods and liquids ('non unitised flows') from tankers to on-shore pipelines. Alongside these changes the volume of freight and bulk movements has continued to grow. In the last 40 years freight traffic through UK ports increased by three quarters<sup>9</sup>. In 2008, ports in England and Wales handled 442 million tonnes of goods, out of a UK total of 562 million tonnes, representing about 95% of the total volume of UK trade, and 75% of its value.

**1.8.4** For an island economy, there are limited alternatives available to the use of sea transport for the movement of freight and bulk commodities. Air

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5 The Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, [www.opsi.gov.uk/SI/si2004/20041633.htm](http://www.opsi.gov.uk/SI/si2004/20041633.htm)

6 Source: Travel Trends 2008 – International Passenger Survey

7 Source: Transport Statistics Great Britain 2008

8 Source: Sea Passenger Statistics 2008

9 Source: [Port Employment and Accident Rates](#), DfT SB(05)32, 2005.

freight is often used for high value items and express deliveries, and the Channel Tunnel has a significant role in freight as well as passenger transport. But these alternatives are constrained by the volumes that can practically be carried by air, by the capacity of the rail links through the tunnel and in the case of aviation by cost and environmental disadvantages. As a consequence, shipping will continue to provide the only effective way to move the vast majority of freight in and out of the UK and the provision of sufficient sea port capacity will remain an essential element in ensuring sustainable growth in the UK economy.

- 1.8.5 Energy Supplies.** Ports have a vital role in the import and export of energy supplies, including oil, Liquid Natural Gas and biomass, in the servicing offshore energy installations and in supporting terminals for oil and gas pipelines. Port handling needs for energy can be expected to change as the mix of our energy supplies changes and particularly as renewables play an increasingly important part as an energy source. Ensuring security of energy supplies through our ports will however be an important consideration and ports will need to be responsive both to changes in different types of energy supplies needed (and to the need for facilities to support the development and maintenance of offshore renewable sites) and to possible changes in the geographical pattern of demand for fuel, including with the development of power stations fuelled by biomass within port perimeters.
- 1.8.6 Tourism and Leisure.** Sea ports play an important role in the tourism and leisure industries, supporting many different forms of economic and social activity including passenger cruise liners, Channel ferries, sea going yachts and dinghies.
- 1.8.7 Wider Economic Benefits.** Despite the growth in volumes moved, with new handling techniques port industry employment is now much lower than it was 50 years ago. However, ports continue to play an important part in local and regional economies, further supporting our national prosperity. In addition to nearly 100,000 people estimated in 2005 to be working on port related activities or on the port estate, indirect employment (supplying goods and services to companies engaged in port activity) and induced employment (associated with expenditure resulting from those who derive incomes from ports) ranged from 27,000 to 100,000. More recent studies have produced higher estimates<sup>10</sup>. By bringing together groups of related businesses within and around the estate, ports also create a cluster effect, which supports economic growth by encouraging innovation and the creation and development of new business opportunities. And new investment, embodying latest technology and meeting current needs, will tend to increase the overall sector productivity.

<sup>10</sup> Oxford Economics for the UK Major Ports Group and One Voice (Maritime UK) industry group

## **1.9 The UK port sector**

**1.9.1** The UK ports sector is the largest in Europe, in terms of tonnage handled<sup>11</sup>. It comprises a variety of company, trust and municipal ports, all operating on commercial principles, independently of government, and without public subsidy. The private sector operates 15 of the largest 20 ports by tonnage and around two thirds of the UK's port traffic. Much of the tonnage handled is concentrated in a small number of ports, with the top 15 ports accounting for almost 80% of the UK's total traffic.

## **1.10 Government Policy for Ports**

**1.10.1** The Government policy for ports was set out in the *Interim Report* of the ports policy review published in 2007. In summary, the Government seeks to:

- encourage sustainable port development to cater for long-term forecast growth in volumes of imports and exports by sea with a competitive and efficient port industry capable of meeting the needs of importers and exporters cost effectively and in a timely manner;
- allow judgments about when and where new developments might be proposed to be made on the basis of commercial factors by the port industry or port developers operating within a free market environment; and
- ensure all proposed developments satisfy the relevant legal, environmental and social constraints and objectives, including those in the relevant European Directives and corresponding national regulations.

**1.10.2** In addition, in order to help meet the requirements of the Government's policies on sustainable development, new port infrastructure should also:

- preserve, protect and where possible improve marine and terrestrial biodiversity;
- minimise emissions of greenhouse gases from port related development;
- be well designed, functionally and environmentally;
- be adapted to the impacts of climate change;
- minimise use of greenfield land;
- contribute to local/regional employment, regeneration and development;
- ensure competition and security of supply;
- provide high standards of protection for the natural environment;

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11 British Ports Association

- ensure that access to and condition of heritage assets are maintained and improved where necessary; and
- enhance access to ports and the jobs, services and social networks they create, including for the most disadvantaged.

**1.10.3** And the Government wishes to see port development wherever possible:

- supporting sustainable transport by offering more efficient transport links with lower environmental disbenefits;
- providing a basis for trans-modal shifts from road transport to shipping and rail, which are generally more sustainable;
- supporting sustainable development by providing additional capacity for the development of renewable energy; and
- supporting economic and social cohesion.

**1.10.4** These underlying policies are intended to support the fundamental aim of improving economic, social and environmental welfare through sustainable development. They recognise the essential contribution to national well-being that international and domestic trade makes. Economic growth is supported by trade but must be aligned with environmental protection and improvement wherever possible. The policies set out below aim to ensure that future port development supports all these objectives.

**1.10.5** This statement takes full account of the Government's wider policy relating to climate change, both through mitigation and adaptation. It does so by recognising the contribution that port developments can make through good environmental design and by their position in the overall logistics chain. International and domestic shipping and inland transport will be subject to other policies and measures, addressing the issues more directly than planning decisions for new development. Section 2.13 discusses mitigation of impacts from port development while 2.14 addresses adaptation.

**1.10.6** The importance of achieving good design in port development is underlined at various points in the statement, with reference to various types of impacts discussed in part 2. Good design is fundamental to mitigating the adverse effects of development, as well as a means to deliver positive aesthetic qualities in an industrial setting.

**1.11 The Government's assessment of the need for port infrastructure**

**1.11.1** The total need for port infrastructure is a consequence of overall demand for port capacity together with the need to retain the flexibility that ensures that port capacity is located where it is required, including in response to any changes in inland distribution networks and ship call

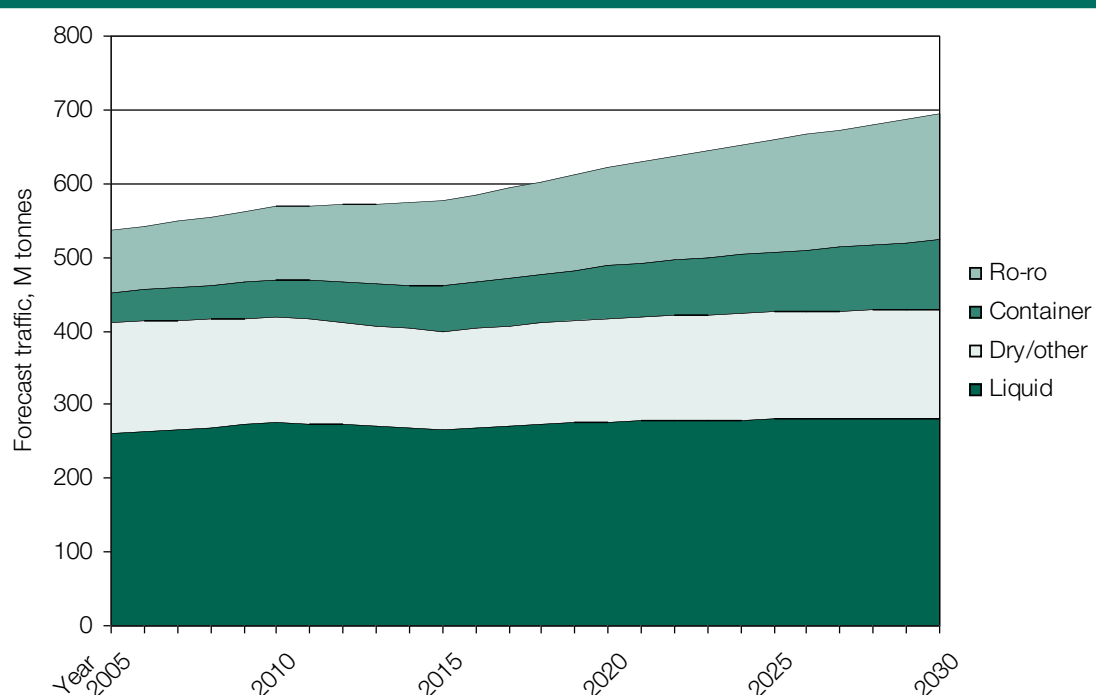
patterns that may occur; and the need to ensure effective competition and resilience in port operations.

**1.11.2 Demand Forecasts.** All previous evidence suggests that, over time and notwithstanding temporary economic downturns, increased trade in goods and, to a lesser extent in commodities, can be expected as a direct consequence of the Government's policies to support sustainable economic growth and to achieve rising prosperity. With 95% of all goods in and out of the UK moving by sea and very limited alternatives, the majority of this increase will need to move through ports around the coast of the United Kingdom.

**1.11.3** Forecasts of demand for port capacity in the period up to 2030 by MDS Transmodal (MDST) were published on behalf of the Department for Transport in 2006 and updated in 2007. The central GB-wide forecasts suggested increases by 2030 over a 2005 base<sup>12</sup> of:

- 182% in containers, from 7m to 20m teu<sup>13</sup> (excluding transhipment),
- 101% in ro-ro traffic, from 85m to 170m tonnes
- 4% in non-unitised traffic, from 411m to 429m tonnes.

**Figure 1: MDS Transmodal central forecast of GB port freight demand, million tonnes**



<sup>12</sup> [http://www.dft.gov.uk/pgr/shippingports/ports/portspolicyreview/207015\\_Final\\_Report\\_2.pdf](http://www.dft.gov.uk/pgr/shippingports/ports/portspolicyreview/207015_Final_Report_2.pdf)

<sup>13</sup> teu: twenty-foot equivalent unit, the standard measure of container capacity. Around two thirds of containers are 40' long, and are classed as 2 teu each. Forecast increase in container tonnage over the period is 40,000 to 94,000 tonnes (136%).

- 1.11.4** Since then, the recession has led to a severe downturn in demand, especially for unitized cargo. The full extent of this recession effect on trade through ports cannot yet be fully quantified. However, the Government's view is that the long-term effect will be to delay by a number of years but not ultimately reduce the eventual levels of demand for port capacity predicted in these forecasts.
- 1.11.5** In addition, since 2005, consents have been granted for a number of container port developments which, if completed as planned, would provide substantial additional container throughput:
- 1.11.6** The Port of Felixstowe handled 3.3 million teu in 2007. Consent granted in February 2006 would provide capacity for an estimated further 1.6 million teu at Felixstowe South;
- Bathside Bay (Harwich): consent granted March 2006 would provide capacity for an estimated 1.7 million teu;
  - London Gateway: consent granted June 2007 would provide capacity for an estimated 3.5 million teu;
  - Teesport, handled 0.15 million teu in 2007. Consent granted February 2008 would provide capacity for a further 1.5 million teu; and
  - Liverpool handled 0.7 million teu in 2007. Consent granted March 2007 would provide capacity for a further 0.6 million teu.
  - Also, Bristol (throughput 0.1 million teu in 2007) has applied for capacity which would allow an estimated 1.5 million teu. And Southampton, which currently handles 1.9 million teu, has advanced plans to expand terminal capacity within its existing development rights, and expects this to provide capacity for an additional 1.7 million teu.
- 1.11.7** If all the above development were to be built, aggregate container capacity would be broadly in line with forecast demand over the next 20 years or so. However, the extent, and speed, with which these developments proceed in reality will depend upon the commercial judgements of the developers at the time. There may therefore be opportunities for other developers to bring forward proposals for alternative or additional developments that satisfy demand that these consented developments are not meeting, as well as a continuing requirement for further new container capacity to meet anticipated longer term growth. Thus, the capacity needed to provide for competition, innovation, flexibility and resilience can be delivered by the market, and is likely to exceed what might be implied by a simple aggregation of demand nationally.
- 1.11.8** **Port Location.** Capacity must be in the right place if it is to effectively and efficiently serve the needs of import and export markets. The location



of ports in England and Wales has changed over time, in response to changes in global markets, in the size and nature of ships, and in the transport networks which support them. Currently, most container and ro-ro terminals are in the South East, while the west coast has been best placed to meet the needs of transatlantic and Irish traffic. Recent consents for container developments have been in or near deepwater ports in the main coastal estuarial locations. But it is not possible to anticipate future commercial opportunities. New shipping routes and technologies may emerge. The needs of trading partners may change, as their economic circumstances develop. So capacity needs to be provided at a wide range of facilities and locations, to provide the flexibility to match the changing demands of the market, possibly with traffic moving from existing ports to new facilities generating surplus capacity.

**1.11.9** The forecasts produced by MDS on behalf of DfT did not attempt to predict the locations where demand would manifest, partly because this is dependent on changes in the market which are difficult to predict now. For the same reason, the Government does not wish to dictate where port development should occur. Port development must be responsive to changing commercial demands, and the Government considers that the market is the best mechanism for getting this right, with developers bringing forward applications for port developments where it considers them to be commercially viable.

**1.11.10 Competition.** UK ports compete with each other, and with neighbours in continental Europe, as primary destinations for long haul shipping, as stops for ships making shorter journeys to and from Europe, and along UK coasts, and as bases for terminals and associated infrastructure. The Government welcomes and encourages such competition. Competition drives efficiency and lowers costs for industry and consumers and so contributes to the competitiveness of the UK economy. Effective competition requires sufficient spare capacity to ensure real choices for port users. It also requires ports to operate at efficient levels, which is not the same as operating at full physical capacity. Demand fluctuates seasonally, weekly and by time of day and some latitude in physical capacity is needed to accommodate such fluctuations. The most efficient form of operation also depends on location -the configuration, availability and cost of land – and the availability and cost of labour. These factors may mean that total port capacity in any sector will need to exceed forecast overall demand if the ports sector is to remain competitive. The Government believes the port industry and port developers are best placed to assess their ability to obtain new business and the level of any new capacity that will be commercially viable, subject to developers satisfying decision makers that the likely impacts of any proposed development have been assessed and addressed.

**1.11.11 Resilience.** Spare capacity also helps to assure the resilience of the national infrastructure. Port capacity is needed at a variety of locations



and covering a range of cargo and handling facilities, to enable the sector to meet short term peaks in demand, the impact of adverse weather conditions, accidents, deliberate disruptive acts and other operational difficulties, without causing economic disruption through impediments to the flow of imports and exports. Given the large number of factors involved the Government believes that resilience is provided most effectively as a by product of a competitive ports sector.

**1.11.12 Conclusion.** Against this background, the Government believes that there is a compelling need for substantial additional port capacity over the next 20-30 years, to be met by a combination of development already consented, and development for which applications have yet to be received. Excluding the possibility of providing additional capacity for the movement of goods and commodities through new port development would be to accept limits on economic growth, and on the price, choice and availability of goods imported into the UK and available to consumers. It would also limit the local and regional economic benefits that new developments might bring. Such an outcome would be strongly against the public interest.

## **1.12 Guidance to the decision-maker on assessing the need for additional capacity**

**1.12.1** In light of the above, when determining an application for an order granting development consent in relation to ports, the decision-maker should accept the need for future capacity to:

- cater for long-term forecast growth in volumes of imports and exports by sea for all commodities indicated by the demand forecast figures set out in the MDST forecasting report accepted by Government, taking into account capacity already consented. The Government expects that ultimately all of the demand forecast in the 2006 ports policy review is likely to arise, though in the light of the 2008-09 recession, not necessarily by 2030;
- support the development of offshore sources of renewable energy;
- offer a sufficiently wide range of facilities at a variety of locations to match existing and expected trade, ship call and inland distribution patterns;
- ensure effective competition between ports and provide resilience in the national infrastructure; and
- take full account of both the potential contribution port developments might make to regional and local economies.

**1.12.2** Advice on how to assess the impacts of developments that might meet these planning policies provided through the guidance on assessment of the impacts of proposed development in Section 2 of this NPS.

## 2 Guidance on Assessment

### 2.1 Key considerations

- 2.1.1** In making decisions on proposals for individual port developments, the planning decision maker should take account of the following key considerations:
- the assessment should be conducted in a manner that is consistent with statutory requirements under UK and EU legislation;
  - the assessment should be conducted in a way that takes into account all of the Government's objectives for transport, including the need:
    - to sustain economic growth and improved productivity through reliable and efficient transport networks;
    - to improve the environmental performance of ports and associated developments including transport and to help tackle climate change;
    - to strengthen the safety and security of transport; and
    - to enhance access to jobs, services and social networks;
  - the assessment should follow the standard framework designed by the Department for Transport and recommended to all port applicants (*A Project Appraisal Framework for Ports, 2005*<sup>14</sup>), which allows all the material considerations to be taken into account in a systematic manner using both quantitative and qualitative indicators;
  - it should take account of other relevant UK policies and plans, including the Marine Policy Statement and any existing marine plans;
  - the assessment should also be informed, as to the material points for consideration, by the points raised by consultees and objectors; and
  - information sought from applicants should be proportionate to the scale of proposed development, its likely impact on and vulnerability to climate change, as well as all other aspects of conformity with this NPS;

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<sup>14</sup> <http://www.dft.gov.uk/adobepdf/165220/193697/projectappraisalframeworkmaindoc>

- for applications relating to Wales, the decision-maker should take account of the Welsh Assembly Government's policies and plans in relevant devolved areas, particularly transport.

**2.1.2** Most of the guidance below will apply to all decision-makers. Where intended to apply specifically to the IPC, it is specifically mentioned.

## **2.2 Consideration of benefits and impacts**

**2.2.1** Where the IPC reaches the view that a proposal for port infrastructure is in accordance with this NPS, it will then have to weigh the suggested benefits, including the contribution that the scheme would make to the national, regional or more local need for the infrastructure, against anticipated adverse impacts, including cumulative impacts.

**2.2.2** **Benefits** – environmental, social and economic – could include those identified in the NPS at a national or regional level as well as local benefits identified at the project specific level. The decision maker should ensure they take account of any longer-term benefits that have been identified (such as job creation), as well as the costs, of development; or any wider benefits to national, regional or local economies.

**2.2.3** **Adverse impacts** may be identified in a number of ways: in the local impact report which relevant local authorities are invited to submit following the acceptance of an application; in an Environmental Statement which accompanies an application; or in written or oral representations made. The NPS in broad terms ascribes weight to be applied to benefits or impacts, including multiple and cumulative impacts of projects, and the decision maker must take these into account in reaching the decision. The precise nature of the impact will, however, vary depending on a number of factors including matters such as, for example, the type of infrastructure, the specific location of the proposed project, heritage assets and the local geology or biodiversity.

**2.2.4** **In this NPS, the terms 'effects', 'impacts' or 'benefits' should accordingly be understood to mean likely significant effects, impacts or benefits.**

**2.2.5** **Cumulative and in-combination/synergistic impacts** may arise as a result of a port infrastructure proposal. Cumulative impacts refer to:

- the effect of any individual development on a combination of receptors, where the impacts on any individual receptor may not outweigh the benefits, but the combination of impacts across all receptors when viewed together may be considered unacceptable; and
- a situation where developments with a low level of impacts individually would, when taken together, have a significant cumulative impact. This might mean that, although the proposed infrastructure development on

its own might be acceptable, even after mitigation of its impacts, the cumulative effect of development outweighs the anticipated benefits of the proposal in that particular location.

- 2.2.6** All proposals that are subject to the EIA Directive will be required to produce an Environmental Statement setting out the likely significant effects of the proposed project on the environment. This is explained further at 2.10.1ff below.
- 2.2.7** In considering any proposal, the decision maker should consider whether any assessment of impacts provided for that proposal takes account of the likely significant cumulative effects across different receptors. Where no such evidence is presented, the decision maker should request further evidence on these cumulative impacts. Where multiple impacts are predicted, even where individually these might be acceptable, after mitigation, the decision maker should consider how this accumulation of impacts might affect the environment, economy or community as a whole.
- 2.2.8** Information on cumulative impacts in the Appraisal of Sustainability (AoS) of a relevant NPS may be both important and relevant to decisions. When considering the impacts of a proposed development, the decision maker may therefore need to take into account the AoS of this or another relevant NPS which highlights the potential for a proposal under consideration to exacerbate cumulative impacts.
- 2.2.9** Prior to granting a development consent order, the decision-maker must, under the Habitats Regulations<sup>15</sup>, consider whether the project may have a significant effect on a European site, or on any site to which the same protection is applied as a matter of policy, either alone or in combination with other plans or projects. Further information on the requirements of the Habitats Regulations can be found in a Government Circular<sup>16</sup>. Applicants should also refer to section 2.12 on biodiversity and geological conservation. The applicant should seek the advice of Natural England and/or the Countryside Council for Wales, and provide the decision-maker with such information as it may reasonably require to determine whether an appropriate assessment is required. In the event that appropriate assessment is required, the applicant must provide the decision-maker with such information as may reasonably be required to enable it to conduct the appropriate assessment. This should include information on any mitigation measures that are proposed to minimise or avoid any significant effects.

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<sup>15</sup> The Conservation (Natural Habitats, &c.) Regulations 1994, [SI 1994 No. 2716](#)

<sup>16</sup> Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System (ODPM 06/2005, Defra 01/2005) available via TSO website [tso.co.uk/bookshop](http://tso.co.uk/bookshop). It should be noted that this document does not cover more recent legislative requirements. Where this circular has been superseded, reference should be made to the latest successor document.

- 2.2.10** If the decision-maker is satisfied that the adverse impacts identified, including any cumulative impacts, outweigh the benefits of a scheme, and that those impacts cannot be adequately avoided, reduced or compensated for, then the application for consent should be refused. The decision-maker should pay particular attention to proposals which may have adverse impacts on sites or species of national or international importance.

## **2.3 Alternatives**

- 2.3.1** The Environmental Statement (ES) should include an outline of the main alternatives studied by the applicant and an indication of the main reasons for the applicant's choice, taking into account the environmental, social and economic effects.

- 2.3.2** There may be many alternative ways of meeting the need that any particular proposed project is aiming to fulfil, including alternative project scale, designs, layout, construction programmes and operational processes, as well as sites and routes. There is no requirement under the Planning Act 2008 for the decision-maker to establish whether the proposed project represents the “best” option amongst the various possible alternatives. And this NPS does not impose any general policy requirement for it to do so. However, in many (though not necessarily all) cases, the decision-maker is likely to conclude that it needs to give some consideration to the question of whether the project could be on a better scale, or designed, laid out, constructed or operated in a better way, or located on a better site or route, because this question will be both important and relevant to its decision. There may also be specific legal requirements for the decision-maker to consider alternatives (for example, under the Habitats and Water Framework Directives).

- 2.3.3** Subject to specific legal requirements to consider alternatives (such as under the Habitats and Water Framework Directives), the decision-maker should frame any consideration of alternatives to the proposed project as follows:

- Does the proposed project have significant local adverse impacts? If not, the decision-maker may be able reasonably to conclude that the existence of possible alternative sites or routes was not important and relevant to its decision.
- Would the adverse impacts be essentially the same wherever the proposed project was sited or routed (i.e. the impacts are a function of the nature of the project rather than the characteristics of the site or route)? In this case, the decision-maker may be able reasonably to conclude that the question of alternative sites would not be important and relevant to its decision.

**2.3.4** As the IPC cannot consent a development which is not in accordance with the relevant NPS, it would be reasonable for the IPC to conclude that alternatives which are not in accordance with the relevant NPS cannot be relevant or important to its decision. In particular:

- the IPC should be guided in judging alternative sites or routes by whether they would comply with the criteria on impacts set out in this NPS;
- in view of the level of need for infrastructure set out in this NPS, the decision-maker should be guided in judging alternative proposals by whether there is a realistic prospect of the alternative delivering the necessary infrastructure in line with the urgency of the need; and
- in considering any alternatives, it would be reasonable for the decision-maker to conclude that alternatives which were vague or inchoate, or where the necessary development could not proceed, for example because they were not commercially viable or physically suitable, may be excluded on the grounds that they were not important and relevant to its decision.

## **2.4 Defence and National Security**

**2.4.1** Development proposed at ports should not prejudice the interests of national defence. In case of doubt, the Ministry of Defence should be consulted.

**2.4.2** National security considerations apply across all national infrastructure sectors. The Department for Transport acts as the Sector Sponsor Department for the ports sector and in this capacity has lead responsibility for security matters in that sector and for directing the security approach to be taken. Where applications for development consent for infrastructure covered by this NPS relate to potentially 'critical' infrastructure (or the Centre for the Protection of National Infrastructure {CNI}), there may be national security considerations.

**2.4.3** Where possible, applicants should ensure that proportionate protective security measures are designed into new infrastructure projects at an early stage in the project development, reflecting the impact on the UK if the essential services provided by the infrastructure were to be lost. This is especially important for the most critical infrastructure.

**2.4.4** To this end, the decision-maker should, where necessary, ensure that the relevant Department has been notified by the applicant of proposals which may have national security implications so that they can be identified and appropriately managed. This includes ensuring (in consultation with relevant security experts) that security measures have been adequately considered in the design process; and that a project has been adequately prepared in terms of managing security risks.

## 2.5 Health

- 2.5.1 Ports have the potential to affect the health, well-being and quality of life of the population.
- 2.5.2 Port developments can have direct impacts on health including increasing traffic, air pollution, dust, odour, polluting water, hazardous waste, and pests.
- 2.5.3 New port developments may also affect the composition, size and proximity of the local population, and in doing so may have indirect health impacts for example if they affect access to key public services, transport or the use of open space for recreation and physical activity.
- 2.5.4 These impacts may affect people simultaneously, so the applicant and the decision-maker should consider the cumulative impact on health.
- 2.5.5 The applicant should identify any adverse health impacts, and identify measures to avoid, reduce or compensate for these impacts as appropriate.

## Economic impacts

### 2.6 Economic impacts: general overview

- 2.6.1 Ports enable international trade, including essential imports, and so contribute to enhancing gross national product. They provide opportunities for foreign direct investment. They generate tax revenues for the Exchequer, and for local government.
- 2.6.2 At regional and local level, economic benefits from port developments include regeneration and employment opportunities. As commercial developments, ports can also generate agglomeration effects by bringing together businesses, with varying degrees of mutual interaction, and producing economic benefits over and above those reflected in the value of transactions among those businesses.
- 2.6.3 Ports can contribute to enhancement of people's skills and of technology, as embodied in equipment used by ports and port-related activities, with wider longer term benefits to the economy.

#### *Guidance for the decision maker*

- 2.6.4 The AoS accompanying this NPS assesses the broad nature and scale of these effects in relation to port development generally. The decision maker may need also to quantify the benefits of an individual application. For example:



- in cases where a port development affects a protected habitat, and in the absence of alternative solutions, the decision maker may need to consider whether there are any imperative reasons of overriding public interest (IROPI) in allowing the development to proceed. In such circumstances, the contribution the development will make toward meeting the national demand for port capacity, as set out in the most up to date forecasts available, will provide a partial estimate for the national economic benefits offered by the development. See section 2.12 on biodiversity impacts;
- in considering whether to reject an application on the grounds that the adverse effects outweigh the benefits, the decision-maker should take into account positive economic externalities. In these circumstances, an assessment using NATA/WebTAG<sup>17</sup> economic impact methodology and the *Project Appraisal Framework for Ports* may be undertaken, which should indicate the degree of weight attaching to these elements. If such an assessment is not feasible, a qualitative assessment may be made. The weight attached to benefits should take account of the level of uncertainty and must avoid double counting, for example by scoring net benefits in one region while ignoring net losses elsewhere. External effects remote from the development in space, nature of activity or time are likely to be uncertain;
- where a port development is likely to lead to a substantial net increase in employment (of 5,000 or more) which would require inward migration to the area, the effect on demand for local public services (such as affordable housing, education and healthcare) should be assessed.

**2.6.5** The decision maker should give substantial weight to the positive impacts associated with economic development, in line with the policy set out in this NPS.

**2.6.6** Expansion of the ports sector through market-oriented investment may stimulate extra employment and training benefits which as noted above may be taken into account in accordance with NATA/WebTAG and the *Project Appraisal Framework for Ports*.

**2.6.7** Transport congestion and its mitigation, as well as costs to hauliers, are recognized as economic issues but transport impacts are bracketed together under environmental impacts at 2.17 below for ease of presentation.

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<sup>17</sup> WebTAG: DfT website containing transport appraisal guidance. See <http://www.dft.gov.uk/webtag/>. The equivalent for Wales is WelTAG (<http://wales.gov.uk/topics/transport/publications/weltag/?lang=en>).



## 2.7 Commercial Impacts

- 2.7.1** Ports in England and Wales operate on commercial lines, without public subsidy and with investment from their own operating profits or from the private sector investors. Port developers must therefore plan to make a commercial return from the investment being made. The decision maker may need to make judgements as to whether possible adverse impacts would arise from the impact of the development on other commercial operators.

### *Guidance for the decision maker*

- 2.7.2** In cases where the adverse impacts would only arise in the event of the success of the project (e.g. through the increased traffic generated by a thriving development) the decision maker should consider the adequacy of the mitigation proposed in such an event rather than the likelihood of the impact arising.
- 2.7.3** Objections from port users adversely affected by the development should be considered in the light of the proposal from the applicant to mitigate those impacts, taking into account any benefits the decision maker believes, on the evidence presented, will accrue to those users from the development.

## 2.8 Competition

- 2.8.1** In some cases, particularly if port developments are occurring in parallel, it may be necessary to make some assessment of the effects of competition in assessing the demand on inland access links and on the phasing of road, rail and other infrastructure demands. This is discussed further in section 2.17 on transport.

## 2.9 Tourism

- 2.9.1** Port developments that include a passenger or cruise terminal may have a positive impact on tourism in the local area by increasing accessibility, particularly in outlying regions. This should be taken into account in assessing the overall benefits. Where increased tourism is likely significantly to affect demand for local services, this impact should be assessed. Additional benefit should also be identified through promoting the historical legacy of working ports; this is important in terms of the changing economic life of ports and how such change is compatible with conserving heritage assets.
- 2.9.2** Port development may have an adverse impact on tourism, for example if it severs or diverts footpaths or bridleways, has a detrimental impact on the surrounding landscape or seascape or affects the space available for local leisure activities such as windsurfing or wildfowling. (See section 2.25 on open space.)

#### *Applicant's assessment*

- 2.9.3** The WebTAG methodology for appraisal of wider economic impacts may be used where tourism benefits or adverse impacts appear potentially significant.

#### *Mitigation*

- 2.9.4** Good design can deliver benefits for tourism, and minimise any adverse impacts.
- 2.9.5** Good environmental quality of water bodies and beaches may also support local tourism and associated businesses, supporting the weight that should be attached to fulfilment of Water Framework Directive requirements.

## Environmental Impacts

### **2.10 Environmental Impact Assessment – general**

- 2.10.1** All proposals for projects that are subject to the European Environmental Impact Assessment Directive<sup>18</sup> must be accompanied by an Environmental Statement (ES) describing the aspects of the environment likely to be significantly affected by the project<sup>19</sup>. The Directive specifically covers 'trading ports...which can take vessels over 1,350 tonnes' within Annex I 8(b) and 'construction of...harbours and port installations, including fishing harbours (projects not included in Annex I)' within Annex II 10(e). The Directive also specifically refers to effects on human beings (including effects on health), fauna and flora, soil, water, air, climate, the landscape, material assets and cultural heritage, and the interaction between them. The Directive requires a description of the likely significant effects of the proposed project on the environment, covering the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project, and also of the measures envisaged for avoiding or mitigating significant adverse effects<sup>20</sup>. When considering a proposal, the decision-maker should ensure that likely significant effects have been adequately assessed, and should request further information where necessary.

#### *Applicant's assessment*

- 2.10.2** While not required by the EIA Directive, the decision-maker will find it helpful if the applicant also sets out information on the likely significant social and economic effects of the development, and shows how any likely significant negative effects would be avoided or mitigated.

<sup>18</sup> Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, amended by Directives 97/11/EC and 2003/35/EC.

<sup>19</sup> See transposing regulations, SI 1999/293 <http://www.opsi.gov.uk/si/si1999/19990293.htm> as amended.

<sup>20</sup> See Circular 02/99: *Environmental impact assessment* for further information on the preparation and content of an Environmental Statement.

This information could include matters such as employment, equality, community cohesion and well-being.

- 2.10.3** When considering cumulative effects, the ES should provide information on how the effects of the applicant's proposal would combine and interact with the effects of other existing and reasonably foreseeable development<sup>21</sup>. The decision-maker may also have other evidence before it, e.g. from appraisals of sustainability of relevant NPSs or development plans, or the Sustainability Appraisals or Strategic Environmental Assessments of other relevant plans and programmes on such effects and potential interactions. Any such information may assist the decision-maker in reaching decisions on proposals and on mitigation measures that may be required.
- 2.10.4** In cases where the EIA Directive does not apply to a project, and an ES is not therefore required, the applicant should instead provide information proportionate to the project on the likely significant environmental, social and economic effects. References to an ES in this NPS should be taken as including a statement which provides this information, even if the EIA Directive does not apply.

#### *Guidance for the decision-maker*

- 2.10.5** The decision-maker should consider how the accumulation of , and inter-relationship between, effects might affect the environment, economy or community as a whole, even though they may be acceptable when considered on an individual basis with mitigation measures in place.
- 2.11 Pollution control and other environmental consenting regimes**
- 2.11.1** Issues relating to discharges or emissions from a proposed project and to impacts on air quality, water quality, the marine environment and noise may be subject to separate regulation under the pollution control framework or other consenting and licensing regimes.
- 2.11.2** The planning and pollution control systems are separate but complementary. The land use planning system controls the development and use of land in the public interest. It plays a key role in protecting and improving the natural environment, public health and safety, and amenity, for example by attaching mitigating requirements<sup>22</sup> to allow developments which would otherwise not be environmentally acceptable to proceed, and preventing harmful development which cannot be made acceptable even through requirements. Pollution control is concerned with preventing

<sup>21</sup> Reasonably foreseeable development could include projects for which consent has been sought or has been granted, as well as those in an approved development plan which are likely to come forward. For guidance on the assessment of cumulative effects, see, for example, Circular 02/99, *Environmental impact assessment*, or *Guidelines for the Assessment of Indirect and Cumulative Impacts as well as Impact Interactions* (<http://ec.europa.eu/environment/eia/eia-studies-and-reports/guidel.pdf>).

<sup>22</sup> Under s.120 Planning Act 2008.

pollution through the use of measures to prohibit or limit the releases of substances to the environment from different sources to the lowest practicable level. It also ensures that ambient air and water quality meet standards that guard against impacts to the environment or human health.

#### *Applicant's assessment*

- 2.11.3** Applicants are advised to make early contact with relevant regulators, including the Environment Agency or the Welsh Assembly Government, and the MMO, to discuss their requirements for environmental permits and other consents. This will help ensure that applications take account of all relevant environmental considerations and that the relevant regulators are able to provide timely advice and assurance to the decision-maker. Wherever possible, applicants are encouraged to submit applications for development consent and pollution control permits or other consents in parallel. This approach is recommended to avoid unnecessary confusion and conflict and to allow the co-ordination of decision-making by the relevant authorities.

#### *Guidance for the decision-maker*

- 2.11.4** In considering an application for development consent, the decision-maker should focus on whether the development itself is an acceptable use of the land, and the impacts of that use, rather than the control of processes or emissions themselves. The decision-maker should work on the assumption that the relevant pollution control regime will be properly applied and enforced. It should act to complement but not seek to duplicate it.
- 2.11.5** These considerations apply in an analogous way to other environmental consenting regimes, including those on land drainage, water abstraction and biodiversity.
- 2.11.6** For projects taking place in the marine area, the decision-maker should consult the Marine Management Organisation (MMO) in England, or the Welsh Assembly Government in Wales. The decision-maker and MMO (or the Welsh Assembly Government) should work together to ensure that nationally significant infrastructure projects are licensed in accordance with environmental legislation, including European directives.
- 2.11.7** Many projects covered by this NPS will be subject to the Environmental Permitting (EP) regime, which, since April 2008, also incorporates operational waste management requirements for certain activities. When a developer applies for an Environmental Permit, the relevant regulator (usually the Environment Agency but sometimes the local authority) requires that the application demonstrates that processes are in place to meet all relevant EP requirements. In considering the impacts of the project, the decision-maker may wish to consult the regulator on any

management plans that would be included in an Environmental Permit application. It is proposed that in 2010, the scope of the Environmental Permitting regime will be widened, for example to include water quality.

- 2.11.8** The decision-maker must be satisfied that development consent can be granted taking full account of environmental impacts. This will require close cooperation with the Environment Agency (EA) and/or the pollution control authority, the Welsh Assembly Government and other relevant bodies, such as the MMO, Natural England or the Countryside Council for Wales, Drainage Boards, and water and sewerage undertakers, to ensure that in the case of potentially polluting developments:
- the relevant pollution control authority is satisfied that potential releases can be adequately regulated under the pollution control framework; and
  - the effects of existing sources of pollution in and around the site are not such that the cumulative effects of pollution when the proposed development is added would make that development unacceptable, particularly in relation to statutory environmental quality limits.
- 2.11.9** These considerations apply in an analogous way to other consenting regimes.
- 2.11.10** The decision-maker should not refuse development consent unless it has good reason to believe that any necessary operational pollution control permits or licences or other consents will not subsequently be granted.

## **2.12 Biodiversity and geological conservation**

- 2.12.1** Biodiversity is the variety of life in all its forms and encompasses all species of plants and animals and the complex ecosystems of which they are a part. Geological conservation relates to the sites that are designated<sup>23</sup> for their geology and/or their geomorphological importance.
- 2.12.2** The wide range of legislative provisions at the international and national level that can bear upon planning decisions affecting biodiversity and geological conservation issues is set out in a Government Circular<sup>24</sup>. A separate guide sets out good practice in England in relation to planning for biodiversity and geological conservation<sup>25</sup>. Guidance for Wales is set out in Technical Advice Note 5<sup>26</sup> on Nature Conservation and Planning.

23 A list of designated sites (including marine sites) is included in the Geological Conservation Review held by the Joint Nature Conservation Committee (JNCC), [www.jncc.gov.uk/earthheritage](http://www.jncc.gov.uk/earthheritage)

24 Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System (ODPM 06/2005, Defra 01/2005) available via TSO website [www.tso.co.uk/bookshop](http://www.tso.co.uk/bookshop) and at [www.communities.gov.uk/publications/planningandbuilding/circularbiodiversity](http://www.communities.gov.uk/publications/planningandbuilding/circularbiodiversity). It should be noted that this document does not cover more recent legislative requirements, such as the Marine Strategy Framework Directive. Where this circular has been superseded, reference should be made to the latest successor document.

25 Planning for Biodiversity and Geological Conservation: A Guide to Good Practice (March 2006)

26 <http://wales.gov.uk/topics/planning/policy/tans/tan5/?lang=en>

Sea ports are necessarily located on coasts and estuaries. These areas are often of fundamental importance to biodiversity, particularly to bird and fish life, acting as the prime nursery grounds for a range of commercial species and as critical migration pathways for other species.

- 2.12.3** Construction and operation of port infrastructure can have an adverse impact on biodiversity and/or geodiversity, including through:
- dredging to maintain declared depths and to deepen waters to accommodate large ships. This can have implications for sediment transport, which can in turn affect marine wildlife, and on potential remobilisation of toxic substances and nutrients, increased suspended solids, reduced visibility and reduction in dissolved oxygen;
  - cargo handling and storage, which may cause run off, spills, or leakages to the marine environment, which could possibly include toxic or harmful material, including organic matter or oily compounds. Water pollution and bottom contamination resulting from these effluents may lead to deterioration of aquatic biota and fishery resources;
  - discharge of ships' ballast water: risks include the possible introduction of non-native species;
  - noise, which can have impacts on fish and aquatic mammalian behaviour patterns; and
  - light, which can alter or hinder the migration of fish through estuaries.

#### *Applicant's assessment*

- 2.12.4** Where the development is subject to environmental impact assessment the applicant should ensure that the environmental statement clearly sets out any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species, and on habitats and other species identified as being of principal importance for the conservation of biodiversity. The decision-maker should also expect the applicant to provide environmental information proportionate to the scale, nature and location of the infrastructure where EIA is not required.

- 2.12.5** The applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.

#### *Guidance for the decision-maker*

- 2.12.6** The Government's biodiversity strategy is set out in *Working with the grain of nature*. Its aim is to ensure:
- a halting, and if possible a reversal, of declines in priority habitats and species, with wild species and habitats as part of healthy, functioning ecosystems; and

- the general acceptance of biodiversity's essential role in enhancing the quality of life, with its conservation becoming a natural consideration in all relevant public, private and non-governmental decisions and policies.

- 2.12.7** This aim needs to be viewed in the context of the challenge of climate change: failure to address this challenge will result in significant harm to biodiversity. The policy set out in the following sections recognises the need to protect the most important biodiversity and geological conservation interests. It also acknowledges that the benefits of nationally significant infrastructure development may include benefits for biodiversity and geological conservation interests and that these benefits may outweigh harm to these interests.
- 2.12.8** As a general principle, and subject to the specific policies below, development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives: where significant harm cannot be avoided, then appropriate compensation measures should be sought.
- 2.12.9** In taking decisions, the decision-maker should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment.
- 2.12.10** The most important sites for biodiversity are those identified through international conventions and European Directives. The Habitats Regulations provide statutory protection for these sites<sup>27</sup>, including candidate Special Areas of Conservation (cSACs), but do not provide statutory protection for potential Special Protection Areas (pSPAs) before they have been classified as a SPA, nor for sites proposed by the natural environment advisers before the Secretary of State has assessed these proposals and forwarded them, if appropriate, to the Commission. For the purposes of considering development proposals affecting them, as a matter of policy, the Government wishes pSPAs to be considered in the same way as if they had already been classified. Designated Ramsar sites should also receive the same protection as a matter of policy.
- 2.12.11** Many SSSIs are also designated as sites of international importance and will be protected accordingly. Those that are not, or those features of SSSIs not covered by an international designation, should be given a high degree of protection. All National Nature Reserves are notified as SSSIs.
- 2.12.12** Where a proposed development on land within or outside a SSSI is likely to have an adverse effect on an SSSI (either individually or in combination

<sup>27</sup> See the Government Circular available at [www.communities.gov.uk/publications/planningandbuilding/circularbiodiversity](http://www.communities.gov.uk/publications/planningandbuilding/circularbiodiversity) for further information on the requirements of the Habitats Regulations.



with other developments), development consent should not normally be granted. Where an adverse effect on the site's notified special interest features is likely, an exception should only be made where the need for and benefits of the development, at this site<sup>28</sup>, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs. The decision-maker should use requirements and/or planning obligations to mitigate the harmful<sup>29</sup> aspects of the development and, where possible, to ensure the conservation and enhancement of the site's biodiversity or geological interest. Advice should be sought from the statutory nature conservation agencies on the possible impacts on the site and appropriate mitigation measures/licence conditions.

**2.12.13** Marine Conservation Zones (MCZs) are areas that have been designated for the purpose of conserving marine flora or fauna, marine habitats or types of marine habitat or features of geological or geomorphological interest. The protected feature or features and the conservation objectives for the MCZ are stated in the designation order for the MCZ. The Marine and Coastal Access Act [or Bill if not enacted at time of publication] 2009 provides statutory protection for these areas.

**2.12.14** Sites of regional and local biodiversity and geological interest, which include Regionally Important Geological Sites, Local Nature Reserves and Local Sites, have a fundamental role to play in meeting overall national biodiversity targets; contributing to the quality of life and the well-being of the community; and in supporting research and education. The decision-maker should give due consideration to such regional or local designations. However, given the need for new infrastructure, these designations should not be used as the sole reason to refuse development consent.

**2.12.15** Ancient woodland is a valuable biodiversity resource both for its diversity of species and for its longevity as woodland. Once lost it cannot be recreated. The decision-maker should not grant development consent for any development that would result in its loss or deterioration unless the need for, and benefits of, the development, in that location<sup>30</sup>, outweigh the loss of the woodland habitat. Aged or 'veteran' trees found outside ancient woodland are also particularly valuable for biodiversity and their loss should be avoided<sup>31</sup>. The decision-maker should encourage the conservation of such trees as part of development proposals.

28 The words "the need for and benefits of the development, at this site" should be understood to mean the national need for the infrastructure and the benefits it will bring, as well as the justification why the project has to take place at the site proposed.

29 As explained for general interpretation at 2.2.4, the term "harm" should be understood to mean significant harm.

30 The words "the need for, and benefits of, the development, in that location" should be understood to mean the national need for the infrastructure and the benefits it will bring, as well as the justification why the project has to take place in the location proposed.

31 This does not prevent the loss of such trees where the decision-maker is satisfied that their loss is unavoidable.



- 2.12.16** Development proposals provide many opportunities for building-in beneficial biodiversity or geological features as part of good design. When considering proposals, the decision-maker should maximise such opportunities in and around developments, using requirements or planning agreements where appropriate.
- 2.12.17** Many individual wildlife species receive statutory protection under a range of legislative provisions<sup>32</sup>.
- 2.12.18** Other species and habitats have been identified as being of principal importance for the conservation of biodiversity in England and Wales<sup>33</sup> and thereby requiring conservation action. The decision-maker should ensure that these species and habitats are protected from the adverse effects of development, where appropriate, by using requirements or planning agreements. The decision-maker should refuse consent where harm to the habitats or species and their habitats would result unless the need for, and benefits of, the development clearly outweigh that harm.

### *Mitigation*

- 2.12.19** The decision-maker should expect the applicant to have included appropriate mitigation measures as an integral part of the proposed development. In particular, the decision-maker should expect the applicant to demonstrate that:
- during construction, they will seek to ensure that activities will be confined to the minimum areas required for the works;
  - during construction and operation, best practice will be followed to ensure that risk of disturbance or damage to species or habitats is minimised, including as a consequence of transport access arrangements;
  - habitats will, where practicable, be restored after construction works have finished; and
  - opportunities will be taken to enhance existing habitats and, where practicable, to create new habitats of value within the site landscaping proposals.
- 2.12.20** Where the applicant cannot demonstrate that appropriate mitigation measures will be put in place the decision-maker should consider what appropriate requirements should be attached to any consent and/or planning obligations entered into.

32 Certain plant and animal species, including all wild birds, are protected under the Wildlife and Countryside Act 1981. European plant and animal species are protected under the Conservation (Natural Habitats, &c) Regulations 1994. Some other animals are protected under their own legislation, for example Protection of Badgers Act 1992.

33 Lists of habitats and species of principal importance for the conservation of biological diversity in England published in response to Section 41 of the Natural Environment and Rural Communities Act 2006 are available from the Biodiversity Action Reporting System website at [www.ukbap-reporting.org.uk/news/details.asp?X=45](http://www.ukbap-reporting.org.uk/news/details.asp?X=45). For Wales the list of habitats and species of principal importance is at [www.biodiversitywales.org.uk/wales\\_biodiversity\\_partnership\\_documents-134.aspx](http://www.biodiversitywales.org.uk/wales_biodiversity_partnership_documents-134.aspx)

- 2.12.21** The decision-maker will need to take account of what mitigation measures may have been agreed between the applicant and Natural England (or the Countryside Council for Wales) or the Marine Management Organisation (MMO) or the Welsh Assembly Government, and whether Natural England (or the Countryside Council for Wales) or the MMO has granted or refused, or intends to grant or refuse, any relevant licences, including protected species mitigation licences.

#### *Additional Guidance on Dredging*

- 2.12.22 Capital dredging:** where capital dredging is required as part of the development, this will need to be subject to full environmental impact assessment, including likely effects on protected European sites or species. As a physical modification, it will need to be tested under the Water Framework Directive (2000/60/EC). The deposit of dredged material on land for recovery or disposal will be subject to the need for a permit or the registration of an exemption.
- 2.12.23 Maintenance dredging:** the Maintenance Dredging Protocol<sup>34</sup> guides operators and regulators on maintenance dredging activities that could potentially affect European sites around the coast of England. The Water Framework Directive is also relevant.
- 2.12.24** The Protocol provides for the environmental assessment of maintenance dredging as a programme, avoiding any need to re-assess separately every time an individual dredge is to be undertaken. This should highlight any requirement to dump or use arisings on land, rather than at sea. The applicant should indicate what effect (if any) the development will have on maintenance dredging requirements, and where necessary should ensure that a draft appropriate assessment under the habitats Directive forms part of the environmental statement for the development as a whole.
- 2.12.25** Re-use of clean dredged arisings may in some cases help to create new inter-tidal habitats as managed re-alignments. Deemed Food and Environment Protection Act (FEPA) licences<sup>35</sup> will be required for the placement of any dredged materials into the sea and other tidal waters anywhere below mean High Water Spring Tide. In Wales, the IPC will not be able to automatically deem FEPA licences. A FEPA licence may, therefore, be required from the Welsh Assembly Government.

### **2.13 Climate change mitigation**

- 2.13.1** Port developments may have an effect on greenhouse gases, particularly through their impact on sea and road transport. This impact may be positive, if the development results in trans-modal shifts from road to shipping or to rail transport, and the benefits from these shifts are greater

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<sup>34</sup> [www.defra.gov.uk/wildlife-pets/wildlife/protect/documents/mdp-cap.pdf](http://www.defra.gov.uk/wildlife-pets/wildlife/protect/documents/mdp-cap.pdf).

<sup>35</sup> Marine Licences following implementation of the Marine and Coastal Access [Act]

than any additional emissions that may be associated with the proposed development.

#### *Applicant's assessment*

- 2.13.2 Shipping.** Given the international nature of shipping and the difficulties in estimating and attributing greenhouse gas emissions from ships, measures to address emissions from ships on international journeys are currently being taken forward on an international basis and are not included in the national targets recommended by the Committee on Climate Change.

#### *Guidance for the decision-maker*

- 2.13.3** The decision-maker does not need to consider the impact of a new port development on greenhouse gas emissions from ships transiting to and from the port.
- 2.13.4 Emissions from ships in ports** are unlikely to be significant contributors to climate change but, where an Environmental Statement is required, it should set out any measures taken to minimize the local effect of emissions, and how these are likely to affect greenhouse gases.
- 2.13.5 Inland transport.** Where a development will lead to significant increases in inland transport needs, the estimated impact on CO<sub>2</sub>, and other greenhouse gases if significant, will need to be covered in the Environmental Statement. A transport assessment will also normally be required. See section 2.17 and NATA/WebTAG guidance.

#### *Guidance for the decision maker*

- 2.13.6** The decision-maker should attach limited weight to the estimated likely net carbon emissions performance of port developments. However, it may be appropriate to agree requirements or obligations that will cement cost-effective ways to minimise GHG emissions in operation. Consent might be withheld if the applicant refused to accept reasonable requirements or obligations related to design, or arising from the transport assessment (again see section 2.17 on transport).

#### *Mitigation*

- 2.13.7** Good design can minimise emissions, and new developments should be designed with a view to fuel efficiency in the operation of buildings and of outdoor plant and machinery and with the maximum use of renewable energy sources.
- 2.13.8** The decision-maker should consider the extent to which the applicant has considered the use of renewable energy on the port estate. Where renewable energy is not planned to be used for a major port development, the reasons should be scrutinized.

**2.13.9** Inter-tidal habitat creation could be one way of offsetting emissions as well as complying with habitats Regulations where appropriate.

**2.13.10** The provision of shore side fixed electrical power to replace the use of ships' generators in port ('cold ironing') may reduce carbon emissions, but the effects will be small. Para 2.20.14 offers more detail on cold ironing.

## **2.14 Climate change adaptation**

**2.14.1** Section 10(3)(a) of the Planning Act requires the Secretary of State to have regard to the desirability of mitigating, and adapting to, climate change in designating an NPS.

**2.14.2** Part 2.11 of this NPS covers climate change mitigation. While climate change mitigation is essential to minimise the most dangerous impacts of climate change, previous global greenhouse gas emissions have already committed us to some degrees of continued climate change for at least the next 30 years.

**2.14.3** Climate change is likely to mean that the UK will experience hotter drier summers and warmer wetter winters. There is a likelihood of increased flooding, drought, heatwaves, intense rainfall events and other extreme events such as storms, as well as rising sea levels. Adaptation is therefore necessary to deal with the potential impacts of these changes that are already in train.

**2.14.4** To support planning decisions, the Government produces a set of UK Climate Projections and is developing a statutory National Adaptation Programme<sup>36</sup>. In addition, the Government's Adaptation Reporting Power<sup>37</sup> will ensure that reporting authorities (a defined list of public bodies and statutory undertakers, including port operators) assess the risks to their organisation presented by climate change. The IPC may take into account reports from port operators to the Secretary of State when considering adaptation measures proposed by an applicant for new port infrastructure.

**2.14.5** In certain circumstances, measures implemented to ensure a port can adapt to climate change may give rise to additional impacts, e.g. as a result of protecting against flood risk there may be consequential impacts on coastal change.

### *Applicant's assessment*

**2.14.6** New port infrastructure will typically be long-term investments which will need to remain operations over many decades, in the face of a

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<sup>36</sup> s.58 of the Climate Change Act 2008

<sup>37</sup> s.62 of the Climate Change Act 2008

changing climate. Consequently, applicants must consider the impacts of climate change when planning the location, design, build and operation of new port infrastructure. Proposals that are subject to the European Environmental Impact Assessment Directive must be accompanied by an Environmental Statement (ES) describing the aspects of the environment likely to be significantly affected by the project. The ES should set out how the proposal will take account of the projected impacts of climate change. While not required by the EIA Directive, this information will be needed by the IPC.

- 2.14.7** Applicants should use the latest set of UK Climate Projections<sup>38</sup> to ensure they have identified appropriate adaptation measures. Applicants should apply, as a minimum, the emissions scenario that the independent Committee on Climate Change suggests the world is currently most closely following – and the 10%, 50% and 90% estimate ranges. These results should be considered alongside relevant research which is based on the climate change projections such as Environment Agency (EA) Flood Maps.
- 2.14.8** In addition, where port infrastructure has safety critical elements (e.g. storage of gas, petro-chemicals) the applicant should apply the high emissions scenario (high impact, low likelihood) to those elements critical to the safe operation of the port infrastructure.

#### *Guidance for the decision-maker*

- 2.14.9** The IPC should satisfy itself that applicants for new port infrastructure have taken into account the potential impacts of climate change using the latest UK Climate Projections to ensure they have identified appropriate adaptation measures. This should cover the estimated lifetime of the new infrastructure. Should a new set of UK Climate Projections become available after the preparation of the ES, the IPC should consider whether they need to request further information from the applicant.
- 2.14.10** If any adaptation measures give rise to consequential impacts the IPC should consider the impact of those in relation to the application as a whole and the impacts set out elsewhere in this NPS (e.g. on flooding, water resources and coastal change).
- 2.14.11** The IPC should satisfy itself that there are not features of the design of new ports infrastructure which may be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK Climate Projections, taking account of the latest credible scientific evidence on, for example, sea level rise (e.g. by referring to additional maximum credible scenarios from the Intergovernmental Panel on Climate Change or EA) and that necessary action can be taken to ensure the operation of the infrastructure over its estimated lifetime.

<sup>38</sup> See <http://ukclimateprojections.defra.gov.uk>

- 2.14.12** Any adaptation measures should be based on the latest set of UK Climate Projections, the Government's latest national Climate Change Risk Assessment and in consultation with the EA.
- 2.14.13** Adaptation measures can be required to be implemented at the time of construction where necessary and appropriate to do so.
- 2.14.14** Where adaptation measures are necessary to deal with the impact of climate change and that measure would have an adverse effect on other aspects of the application and/or surrounding environment (e.g. coastal processes), the IPC may consider requiring the applicant to ensure that the adaptation measure could be implemented should the need arise, rather than at the outset of the development (e.g. increasing height of existing, or requiring a new, sea wall).
- 2.14.15** The generic impacts advice in this NPS provide additional information.

## **2.15 Flooding**

- 2.15.1** Flooding from rivers and coastal waters is a natural process that plays an important role in shaping the natural environment. However, flooding threatens life and causes substantial damage to property. The effects of weather events can be increased in severity both as a consequence of previous decisions about the location, design and nature of settlement and land use, and as a potential consequence of future climate change. Although flooding cannot be wholly prevented, its impacts can be avoided and reduced through good planning and management.
- 2.15.2** Climate change over the next few decades is likely to mean milder wetter winters and hotter drier summers in the UK, while sea levels will continue to rise. These factors will lead to increased and new risks of flooding within the lifetime of nationally significant infrastructure projects. The applicant and the decision-maker should take account of the advice on climate change adaptation in section 2.13.
- 2.15.3** The aims of planning policy on development and flood risk<sup>39</sup> are to ensure that flood risk is taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding, and to direct development away from areas at highest risk. Where new development is, exceptionally, necessary in such areas, including 'water compatible' development, policy aims to make it safe without increasing flood risk elsewhere and where possible, reducing flood risk overall. Port development is water-compatible development and therefore acceptable in high flood risk areas.

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<sup>39</sup> See Planning Policy Statement 25 (PPS25), CLG, December 2006

*Applicant's assessment*

**2.15.4** All applications for port development should be accompanied by a flood risk assessment (FRA). This should identify and assess the risks of all forms of flooding to and from the project and demonstrate how these flood risks will be managed, taking climate change into account. The FRA should form part of the ES.

**2.15.5** The minimum requirements for flood risk assessments are that they should:

- be proportionate to the risk and appropriate to the scale, nature and location of the project;
- consider the risk of flooding arising from the project in addition to the risk of flooding to the project;
- take the impacts of climate change into account;
- be undertaken by competent people, as early as possible in the process of preparing the proposal;
- consider both the potential adverse and beneficial effects of flood risk management infrastructure including raised defences, flow channels, flood storage areas and other artificial features together with the consequences of their failure;
- consider the vulnerability of those using the site, including arrangements for safe access;
- consider and quantify the different types of flooding (whether from natural or human sources and including joint and cumulative effects) and identify flood risk reduction measures, so that assessments are fit for the purpose of the decisions being made;
- consider the effects of a range of flooding events including extreme events on people, property, the natural and historic environment and river and coastal processes;
- include the assessment of the remaining (known as 'residual') risk after risk reduction measures have been taken into account and demonstrate that this is acceptable for the particular project;
- consider how the ability of water to soak into the ground may change with development, along with how the proposed layout of the project may affect drainage systems; and
- be supported by appropriate data and information, including historical information on previous events.

**2.15.6** Further guidance can be found in the Practice Guide which accompanies Planning Policy Statement 25 (PPS25) or successor documents.



Guidance for Wales is set out in Technical Advice Note 15 on Development and Flood Risk<sup>40</sup>.

- 2.15.7** Applicants for projects which may be affected by, or may add to, flood risk should arrange pre-application discussions with the decision-maker and the Environment Agency, and, where relevant, other bodies such as sewerage undertakers and highways authorities. Such discussions should identify the likelihood and possible extent and nature of the flood risk, to assist in scoping the FRA, and identify the information that will be required by the decision-maker to reach a decision on the application when it is submitted. The decision-maker should advise intending applicants to undertake these steps where they appear necessary, but have not yet been addressed.

*Guidance for the decision-maker*

- 2.15.8** In determining an application for development consent, the decision-maker should be satisfied that:
- the application is supported by site-specific flood risk assessment (FRA) as appropriate;
  - a sequential approach has been applied at the site level to minimise risk by directing the most vulnerable uses to areas of lowest flood risk;
  - priority has been given to the use of sustainable drainage systems (SuDS);
  - the sequential test has been applied as part of site-selection, as appropriate;
  - in flood risk areas the project is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed;
  - any new port development (including associated development) in the Functional Floodplain, where water has to flow or be stored in times of flood, would result in no net loss of floodplain, not impede water flows and not increase flood risk elsewhere; and
  - the development does not increase flood risk elsewhere and where possible will reduce overall flood risk.

*Risks within ports*

- 2.15.9** In broad terms it will be in port operatives' promoters' own interests that full account of climate change impacts and the increased probability of extreme weather events is taken in applications, in order to ensure, so far as reasonably possible, that no commercial loss will be experienced through inadequacy of infrastructure.

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<sup>40</sup> <http://wales.gov.uk/topics/planning/policy/tans/tan15?lang=en>



- 2.15.10** The Government's view is that there is no 'public good' need, on national resilience grounds, to require a higher specification than will secure commercial resilience of the individual facility, notwithstanding that some types of severe weather may affect all ports in a region or along a particular stretch of coastline, for example from a storm surge. This NPS provides more generally for resilience and diversity of ports provision. Applicants will be in the best position to make a commercial judgement on the required appropriate adaptation measures to reduce the risk from long-term climate change as it affects their own facilities.

#### *Flood risk outside the port area*

- 2.15.11** The decision-maker should ensure that the applicant has considered the impact of the port development on the risk of flooding outside the port area and has taken reasonable measures to reduce this as far as possible. Exceptionally, where an increase in flood risk elsewhere cannot be avoided or wholly mitigated, the IPC may grant consent if it is satisfied that the increase in flood risk can be mitigated to an acceptable level taking account of the benefits of port infrastructure as set out in Part 1 above. Applications should also assess the impact on coastal processes – see 2.16 below.

#### *Associated development*

- 2.15.12** Associated development may include facilities that do not have to be located on or close to the port estate. Wherever technically feasible and economically reasonable, land-based facilities should be directed to sites at low probability of flooding from all sources. In addition to the above requirements, a sequential test should be applied to demonstrate that there are no reasonably available sites, that would be appropriate to the type of development or land-use proposed, in areas with a significantly lower probability of flooding.
- 2.15.13** Preference should be given to locating associated port development projects in Flood Zone 1. If there is no reasonably available site in Flood Zone 1, then projects can be located in Flood Zone 2. If there is no reasonably available site<sup>41</sup> in Flood Zones 1 or 2, then projects can be located in Flood Zone 3 subject to the Exception Test. The exception test is only appropriate for use where the sequential test alone cannot deliver an acceptable site, taking into account the need for essential infrastructure to remain operational during floods. It may also be appropriate to use it where restrictive national designations such as landscape, heritage and nature conservation designations, e.g. Areas of Outstanding Natural Beauty (AONBs), Sites of Special Scientific Interest (SSSIs) and World Heritage Sites (WHS), prevent the availability of a suitable site in lower risk areas.

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<sup>41</sup> When making the application, the applicant should justify with evidence what area of search has been used in examining whether there are reasonably available sites. This will allow the IPC to undertake the Sequential Test as part of considering the application

- 2.15.14** All the three elements of the exception test will have to be passed for development to be consented:
- it must be demonstrated that the project provides wider sustainability benefits to the community<sup>42</sup> that outweigh flood risk;
  - the project should be on developable previously-developed land<sup>43</sup> or, if it is not on previously developed land, that there are no reasonable alternative sites on developable previously-developed land; and
  - a FRA must demonstrate that the project will be safe, without increasing flood risk elsewhere and, where possible, will reduce flood risk overall.

#### *Environment Agency objections*

- 2.15.15** If the Environment Agency objects to an application on flood risk grounds, all parties (the decision-maker, the Environment Agency and the applicant), should discuss and agree the course of action which would need to be taken to enable the Environment Agency to withdraw its objection.
- 2.15.16** Where the Environment Agency has not withdrawn an objection, the decision-maker will need to be satisfied, before deciding whether to grant consent, that all reasonable steps have been taken by the Environment Agency and the applicant through discussions to consider ways in which the application might be amended, or additional information provided, which would allow the Environment Agency's objection to be withdrawn.

#### *Mitigation*

- 2.15.17** It is the responsibility of the developer to fully assess flood risk, propose measures to mitigate it and demonstrate that any residual risks can be safely managed. This should include designs which reduce flood risk to the development and elsewhere, by incorporating sustainable drainage systems where appropriate, and where necessary, flood resilience measures.
- 2.15.18** To satisfactorily manage flood risk, appropriate surface water drainage arrangements are required, to manage surface water and the impact of the natural water cycle on people and property.

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<sup>42</sup> These would include the benefits of, including the need for, the infrastructure set out in part 1.

<sup>43</sup> Previously-developed land is that which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. This definition includes defence buildings, but excludes (a) land that is or has been occupied by agricultural or forestry buildings (b) land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures (c) land in built up areas such as parks, recreation grounds and allotments, which, although it may feature paths, pavilions and other buildings, has not been previously developed (d) land that was previously-developed but where the remains of the permanent surface structure or fixed surface structure have blended into the landscape in the process of time (to the extent that it can reasonably be considered as part of the natural surroundings).

- 2.15.19** The term Sustainable Drainage Systems (SuDS) is frequently used and taken to cover the whole range of sustainable approaches to surface water drainage management including:
- source control measures including rainwater recycling and drainage;
  - infiltration devices to allow water to soak into the ground, that can include individual soakaways and communal facilities;
  - filter strips and swales, which are vegetated features that hold and drain water downhill mimicking natural drainage patterns;
  - filter drains and porous pavements to allow rainwater and run-off to infiltrate into permeable material below ground and provide storage if needed; and
  - basins and ponds to hold excess water after rain and allow controlled discharge that avoids flooding.
- 2.15.20** Site layout and surface water drainage systems should cope with events that exceed the design capacity of the system, so that excess water can be safely stored on or conveyed from the site without adverse impacts.
- 2.15.21** The surface water drainage arrangements for any project should be such that the volumes and peak flow rates of surface water leaving the site are no greater than the rates prior to the proposed project, unless specific off-site arrangements are made and result in the same net effect.
- 2.15.22** It may be necessary to provide surface water storage and infiltration to limit and reduce both the peak rate of discharge from the site and the total volume discharged from the site. There may be circumstances where it is appropriate for infiltration attenuation storage to be provided outside the project site, if necessary through the use of a planning obligation.
- 2.15.23** The sequential approach should be applied to the layout and design of the project. More vulnerable uses should be located on parts of the site at less probability and residual risk of flooding. Applicants should seek opportunities to use multi-purpose open space for amenity, wildlife habitat and flood storage uses. Opportunities should be taken to lower flood risk by reducing the built footprint of previously-developed sites and using sustainable drainage systems.
- 2.15.24** Development which has to be located in flood risk areas should be designed to remain operational when floods occur.
- 2.15.25** The receipt of and response to warnings of floods is an essential element in the management of the residual risk of flooding. Evacuation plans should be in place for those areas at an identified risk of flooding.

Applicants should take advice from the emergency services when producing an evacuation plan for the project as part of the FRA.

## **2.16 Coastal change**

- 2.16.1** Coastal change, as exacerbated by climate change, has implications for development on the coast and is, therefore, a major consideration in ensuring that proposed new onshore infrastructure projects are resilient to climate change. Where onshore infrastructure projects are proposed on the coast, coastal change is a key consideration alongside others specifically relevant to coastal environments.
- 2.16.2** The construction of a port development may involve, for example, dredging, dredge spoil deposition, marine landing facility construction and flood and coastal protection measures which could result in direct effects on the coastline, seabed, heritage assets and marine ecology and biodiversity.
- 2.16.3** Additionally indirect changes to the coastline and seabed might arise as a result of a hydrodynamic response to some of these direct changes. This could lead to localised or more widespread coastal erosion or accretion and changes to offshore features such as submerged banks and ridges and marine biodiversity. In addition, such change may result in exposure and destabilisation of either known or previously unknown heritage assets.
- 2.16.4** The generic impact advice on flood risk and the earlier guidance in this Part on adaptation to climate change, including the increased risk of coastal erosion, are also relevant, as is advice on access to coastal recreation sites and features in section 2.23 on land use and on the historic environment at 2.24.1ff.

### *Applicant's assessment*

- 2.16.5** Where relevant, applicants should undertake coastal geomorphological and sediment transfer modelling to predict and understand impacts and help identify relevant mitigating or compensatory measures.
- 2.16.6** Applicants should assess:
- the impact of the proposed project on coastal processes and geomorphology, including by taking account of potential impacts from climate change. If the development will have an impact on coastal processes the applicant must demonstrate how the impacts will be managed to minimise adverse impacts on other parts of the coast;
  - the implications of the proposed project on strategies for managing the coast as set out in Shoreline Management Plans, any relevant marine plans, and capital programmes for maintaining flood defences;

- the effects of the proposed project on marine ecology, biodiversity and protected sites;
- the effects of the proposed project on maintaining coastal recreation sites and features; and
- the vulnerability of the proposed development to coastal change, taking account of climate change, during the project's operational life and any decommissioning period.

**2.16.7** For any projects involving dredging or disposal into the sea, the applicant should consult the Marine Management Organisation (MMO)<sup>44</sup> or the Welsh Assembly Government at an early stage.

**2.16.8** The applicant should be particularly careful to identify any effects on the integrity and special features of Marine Nature Reserves and their proposed successor Marine Conservation Zones, candidate Special Areas of Conservation (SACs), SACs, coastal Special Protection Areas (SPAs) and potential SPAs, Ramsar sites, Sites of Community Importance (SCIs) and potential SCIs and sites of Special Scientific Interest; as well as on the heritage asset categories noted at 2.24.4 below.

#### *Guidance for the decision-maker*

**2.16.9** The decision-maker should be satisfied that the proposed development will be resilient to coastal erosion and deposition, taking account of climate change, during the project's operational life and any decommissioning period.

**2.16.10** The decision-maker should not normally consent new development in areas of dynamic shorelines where the proposal could inhibit sediment flow or have an impact on coastal processes at other locations. Impacts on coastal processes must be managed to minimise adverse impacts on other parts of the coast. Where such proposals are brought forward consent should only be granted where the decision-maker is satisfied that the need for and benefits of the development outweigh the adverse impacts.

**2.16.11** The decision-maker should ensure that applicants have restoration plans for areas of foreshore disturbed by direct works and will undertake pre and post-construction coastal monitoring arrangements with defined triggers for intervention and restoration.

**2.16.12** The decision-maker should examine the broader context of coastal protection around the proposed site, and the influence in both directions, i.e. coast on site, and site on coast.

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<sup>44</sup> Prior to establishment of the MMO, applicants should consult the Marine and Fisheries Agency (MFA).

- 2.16.13** The decision-maker should consult MMO or the Welsh Assembly Government on projects which could impact on coastal change, particularly those requiring a FEPA/marine licence, since the MMO or the Welsh Assembly Government may also be involved in considering other projects which may have coastal impacts.
- 2.16.14** In addition to this NPS the IPC should have regard to other information which may be both important and relevant – this may include relevant Shoreline Management Plans, as well as the UK Marine Policy Statement and relevant marine plans as provided for in the Marine and Coastal Access Bill.
- 2.16.15** Substantial weight should be attached to the risks of flooding and coastal erosion. The applicant must demonstrate that full account has been taken of the policy on assessment and mitigation in section 2.15 above of this NPS on flood risk, taking account of the potential effects of climate change on these risks as discussed above.

#### *Mitigation*

- 2.16.16** The decision-maker should expect applicants to be taking appropriate mitigation measures to address adverse effects on the historic environment, marine biodiversity and coastal geomorphology, in consultation with the MFA (and, in due course, the MMO), the Welsh Assembly Government or the Environment Agency, Local Planning Authorities, other statutory consultees, Coastal Partnerships and other coastal groups, as it considers appropriate. Where this is not the case the decision-maker should consider what appropriate mitigation requirements might be attached to any grant of development consent.

### **2.17 Transport**

- 2.17.1** Goods enter and leave the port by various combinations of road, rail and water transport (and in some cases by pipeline). The balance of modes used can have a variety of impacts on the surrounding road, rail and water infrastructure and consequently on the existing users of this infrastructure. Passengers and employees of ports and port-related businesses use both public and private transport, mainly road, and their travel can also affect congestion on connecting networks.
- 2.17.2** The most significant of these impacts, in the case of unitized traffic, is likely to be on the surrounding road infrastructure. The impact from increased traffic would, unless mitigating measures are taken, be likely to be an increase in congestion. There are also environmental impacts of road transport as compared with rail and water transport in terms of noise and emissions.

- 2.17.3** Delays at ports can occur for a number of reasons including adverse weather conditions and industrial relations issues. Such delays can often result in a significant backlog of goods waiting to depart by ship. Such an event can have an adverse impact on connecting road infrastructure if the port estate is not able to provide sufficient capacity for the parking of HGVs.

#### *Applicant's assessment*

- 2.17.4** For all port applications likely to have a significant effect on inland transport, an objective Transport Assessment should be undertaken. This should use the methodology stipulated in the applicable guidance from DfT (NATA/WebTAG)<sup>45</sup> (or any successor to this methodology), the Highways Agency<sup>46</sup> and the rail network provider (usually Network Rail). The assessment should illustrate accessibility to the site by all modes and the likely modal split of journeys to and from the site.
- 2.17.5** Where domestic access to a proposed development is to be wholly or largely by road, the applicant should specifically demonstrate why it is not considered feasible to use alternative modes for domestic distribution, and how any adverse transport, environmental and other impacts will be addressed. In such cases, if the applicant considers that there is no need for a lorry-booking or similar system to spread peak usage, the reason for this view should be explained.
- 2.17.6** Where appropriate, the applicant should prepare a travel plan including demand management measures to mitigate transport impacts. The applicant should also provide details of proposed measures to improve access by public transport, walking and cycling, to reduce the need for parking associated with the proposal and to mitigate transport impacts.
- 2.17.7** The NATA/WebTAG methodology enables a simplified analysis encompassing the congestion and environmental disbenefits of road traffic.
- 2.17.8** It is recognized that the data to inform a transport assessment may be incomplete, particularly as regards inland origins and destinations of goods beyond the national or regional distribution centre. The consequent element of uncertainty in the outputs should be taken into account.
- 2.17.9** In the case of container terminal development, account should be taken of the projected proportion of transshipment of containers and its variation over time as, for example, the proportion of direct-call may grow with overall demand.

<sup>45</sup> <http://www.dft.gov.uk/webtag/>

<sup>46</sup> In Wales, the Welsh Assembly Government.



- 2.17.10** Transport assessment should include private traffic accessing and leaving the port, where significant, even where not generated by the development under application.

*Guidance for the decision-maker*

- 2.17.11** The decision maker should not grant consent to schemes where the adverse impacts after mitigation outweigh the benefits. Substantial weight should be placed on transport impacts that would occur in the absence of mitigation. The decision-maker should consider whether appropriate requirements should be attached to any development consent and/or obligations entered into for funding infrastructure and otherwise mitigating adverse impacts on transport networks, as set out below.
- 2.17.12** Transport mitigation measures should accord with the Government's broader policy objectives for sustainable development as described at section 1.10 above.
- 2.17.13** Subject to requirements imposed and/or provided that the applicant is willing to enter into planning obligations which mitigate transport impacts, with attribution of costs calculated in accordance with the Department's guidance, then development consent should not be withheld, and limited weight should be applied to residual effects.

*Mitigation*

*– Demand management*

- 2.17.14** Demand management must be considered and if feasible and operationally reasonable, required before the need for provision of new inland transport infrastructure to deal with remaining transport impacts is determined.
- 2.17.15** Demand management measures may in particular include lorry-booking arrangements aimed at spreading peak traffic within the working day. When determining the reasonableness of such measures, inflexibility of timing for arrival or departure at the other end of the journey (for example, at a distribution depot), should not be accorded great weight. This is because it is the Government's policy to encourage flexibility at both ends of the journey wherever possible.
- 2.17.16** The decision maker should have regard to the cost-effectiveness of demand management measures compared to new transport infrastructure, as well as the aim to secure more sustainable patterns of transport development when considering mitigation measures. The intention is that demand management measures should, in the medium to long term, be required where preferable to infrastructure enhancement, from the point of view of the applicant and of the network provider.



– *Modal Share*

- 2.17.17** The modal share of traffic entering and leaving the port needs to be carefully considered. Broadly speaking, rail and coastal or inland shipping should be encouraged over road transport.
- 2.17.18** Because of the scale economies of consolidated loads, rail share is likely to be viable for unitised traffic in above-threshold container terminals, and there may be a possibility of encouraging some ro-ro traffic onto rail connections. For some forms of bulk traffic, rail may be the commercially predominant inland mode. Coastal shipping and inland waterways may be viable for certain flows.
- 2.17.19** For containers, the gauge clearance of the rail route to the most likely destinations for traffic should be considered, specifically whether clearance to W10 gauge at least is available or should be provided for to enable 9'6" 'hi-cube' containers to be transported on conventional wagons.
- 2.17.20** The use of inland waterways for the movement of goods to and from the port should be considered. Similarly, the prospect of promoting coastal shipping as an alternative to road and rail transport should be considered.
- 2.17.21** Obligations or requirements should be structured flexibly so as to keep to a reasonable minimum the risk that either applicants or network providers would be required to incur costs providing infrastructure that turned out to be under-used. Such measures might include various mechanisms such as traffic-level triggers, shadow-tolling and/or escrow arrangements to guarantee funding.
- 2.17.22** Target modal shares for rail or coastal shipping may sometimes be appropriate but are not mandatory. Such shares should not be regarded as ends in themselves, but as indicators of the approximate modal shares which, on the basis of the transport assessment, appear to be the outcome of cost-effective transport obligations. Where such targets are to be set, there should always be an agreed understanding of the broad mechanisms by which they can be achieved, and 'early warning' decision points so that corrective measures may be taken if appropriate.
- 2.17.23** Rail obligations should not be sought to such an extent that the estimated net social cost of delivering them (net of the benefits of road vehicle mileage avoided) exceeds the corresponding net social cost of accommodating the marginal traffic on the roads. In assessing whether this is so, regard should be had to NATA/WebTAG or other methodological guidance issued by DfT.
- 2.17.24** Rail (or coastal-shipping) shares should not simply be read across from a previous development to the one under consideration, as the most

efficient transport outcome may differ significantly according to all the circumstances of the case.

– HGVs

**2.17.25** Where a development, including any container or ro-ro development, is likely to generate or attract substantial HGV traffic, requirements should be imposed and/or obligations required to ensure:

- that there is sufficient provision for lorry parking, either on the port estate or at dedicated facilities elsewhere, to avoid a need for ‘overspill’ parking on public roads during normal operating conditions. Developments should be designed with sufficient road capacity and parking provision (whether on- or off-site) to avoid the need for prolonged queuing on approach roads, and particularly for uncontrolled on-street HGV parking on nearby public roads in normal traffic conditions, allowing reasonable estimates for peak traffic patterns and fluctuations during normal operations
- and that there are satisfactory arrangements, taking account of the views of road network providers and of the responsible police force(s), for dealing with reasonably foreseeable abnormal disruption. Where such effects are likely to cause queuing on the strategic road network or significant queuing on local roads, the applicant should include the outcome of consultation with the relevant police force(s) as to traffic management measures that will be brought into effect, what the procedures will be for triggering them, and attribution of costs.

**2.17.26** Ports can provide valuable facilities for the checking of heavy goods vehicles. Port development that includes ro-ro facilities should be planned in such a way that facilities can be provided for enforcement agencies to operate checks as and when appropriate.

– Access

**2.17.27** Where development would worsen accessibility, particularly including by pedestrians and cyclists, such impacts should be mitigated so far as reasonably possible.

**2.17.28** Employee travel planning should be undertaken for all major port development.

*Funding of Infrastructure*

**2.17.29** Separate guidance has been issued<sup>47</sup> on developer contributions in England<sup>48</sup>. The essential principle is that the developer is expected to fund provision of infrastructure required solely to accommodate users of the development without detriment to pre-existing users. Where, in

<sup>47</sup> <http://www.dft.gov.uk/pgr/regional/fundingtransportinfrastructure/>

<sup>48</sup> No separate guidance has been issued for Wales, where the Welsh Assembly Government would discuss funding arrangements with developers on a project-specific basis.

the case of a nationally significant infrastructure project (NSIP) such as a major port development, there is a case for bringing forward schemes which help meet the ‘background’ growth in ‘third-party’ traffic, the guidance explains the circumstances in which the Government would expect to ‘co-fund’ in respect of such benefits, and the methodology that should be employed to determine funding shares.

- 2.17.30** The Government cannot guarantee in advance that funding will be available for any given uncommitted scheme at any specified time.
- 2.17.31** Applicants should engage, from the earliest stages of project development, with network providers, to assess whether in the case of a specific major port development co-funding by Government may be appropriate, in recognition of third-party benefits.
- 2.17.32** Parties should endeavour to agree in advance, in as much detail as possible, the scope of works, the precise basis on which costs and risks will be attributed, and arrangements for dispute resolution. If the decision-maker is not satisfied that draft s.106 (Town & Country Planning Act), s.278 (Highways Act) or other forms of agreement are sufficiently precise, it may invite the parties to engage in further negotiations to arrive at a more detailed agreement before the granting of consent will be countenanced.
- 2.17.33** A timetable should be set for such negotiations. With proper frontloading of the application process it should be possible to get all parties aligned in time to complete any necessary agreements before the decision is made. If there is failure to reach agreement within that time, appropriate requirements may be imposed.
- 2.17.34** If the applicant submits that the costs of meeting the obligations and/or requirements mitigation requirements arising from the transport assessment, or otherwise envisaged by the decision-maker, would be so great as to render the development unviable, this should not in itself justify those relaxation of any obligations or requirements needed to secure the mitigation to be relaxed.

## **2.18 Waste generation and resource use**

- 2.18.1** Government policy on hazardous and non-hazardous waste is intended to protect human health and the environment by producing less waste and by using it as a resource wherever possible. Where this is not possible, waste management regulation ensures that waste is disposed of in a way that is least environmentally damaging and encourages reclamation of waste wherever possible.

**2.18.2** Sustainable waste management is implemented through the “waste hierarchy”:

- prevention;
- preparing for reuse;
- recycling;
- other recovery, including energy recovery;
- disposal.

**2.18.3** Disposal of waste should only be considered where other waste management options are not available or where it is the best overall environmental outcome.

**2.18.4** All large infrastructure projects are likely to generate hazardous and non-hazardous waste during the construction, operation and decommissioning phases. The Environment Agency’s (EA) Environmental Permitting (EP) regime incorporates operational waste management requirements for certain activities. When an applicant applies to the EA for an Environmental Permit, the EA will require the application to demonstrate that processes are in place to meet all relevant EP requirements.

#### *Applicant’s assessment*

**2.18.5** The applicant should set out the arrangements that are proposed for managing any waste produced. This should include information on the proposed waste recovery and disposal system for all waste generated by the development, and an assessment of the impact of the waste arising from development on the capacity of waste management facilities to deal with other waste arising in the area for at least five years of operation. The applicant should seek to minimise the volume of waste produced and the volume of waste sent for disposal unless it can be demonstrated that this is the best overall environmental outcome.

#### *Guidance for the decision-maker*

**2.18.6** The decision-maker should consider the extent to which the applicant has proposed an effective system for managing hazardous and non-hazardous waste arising from the construction, operation and decommissioning of the proposed development. It should be satisfied that:

- any such waste will be properly managed, both on-site and off-site;
- the waste from the proposed facility can be dealt with appropriately by the waste infrastructure which is, or is likely to be, available. Such waste arisings should not have an adverse effect on the capacity of

existing waste management facilities to deal with other waste arisings in the area; and

- adequate steps have been taken to minimise the volume of waste arisings, and of the volume of waste arisings sent to disposal, except where that is the best overall environmental outcome.

**2.18.7** Where necessary, the decision-maker should use requirements or obligations to ensure that appropriate measures for waste management are applied. The decision-maker may wish to include a condition on revision of waste management plans at reasonable intervals when giving consent.

**2.18.8** Where the project will be subject to the Environment Agency's Environmental Permitting (EP) regime, waste management arrangements during operations will be covered by the permit and the considerations set out in section 2.11 will apply.

## **2.19 Water**

**2.19.1** Infrastructure development can have adverse effects on the water environment, including groundwater, inland surface water, transitional waters<sup>49</sup> and coastal waters. During the construction and operation (and potentially, decommissioning) phases, it can lead to increased demand for water, involve discharges to water and cause adverse ecological effects resulting from physical modifications to the water environment.

**2.19.2** There may also be an increased risk of spills and leaks of pollutants to the water environment. These effects could lead to adverse impacts on health or on protected species and habitats (see section on biodiversity at 2.12) and could, in particular, result in surface waters, groundwaters or protected areas<sup>50</sup> failing to meet environmental objectives established under the Water Framework Directive.

### *Applicant's assessment*

**2.19.3** Where the project is likely to have adverse effects on the water environment, the applicant should undertake an assessment of the existing status of, and impacts of the proposed project on water quality, water resources and physical characteristics as part of the Environmental Statement (ES) or equivalent.

49 As defined in the Water Framework Directive (2000/60/EC), transitional waters are bodies of surface water in the vicinity of river mouths which are partly saline in character as a result of their proximity to coastal waters but which are substantially influenced by freshwater flows.

50 Protected areas are areas which have been designated as requiring special protection under specific Community legislation for the protection of their surface water and groundwater or for the conservation of habitats and species directly depending on water.

**2.19.4** The ES should describe:

- the existing quality of waters affected by the proposed project and the impacts of the proposed project on water quality, noting any relevant existing discharges, proposed new discharges and proposed changes to discharges;
- existing water resources affected by the proposed project and the impacts of the proposed project on water resources, noting any relevant existing abstraction rates, proposed new abstraction rates and proposed changes to abstraction rates (including any impact on or use of mains supplies and reference to Catchment Abstraction Management Strategies);
- existing physical characteristics of the water environment (including quantity and dynamics of flow) affected by the proposed project and any impact of physical modifications to these characteristics;
- any impacts of the proposed project on water bodies or protected areas under the Water Framework Directive; and
- any cumulative effects.

*Guidance for the decision-maker*

**2.19.5** Activities that discharge to the water environment are subject to pollution control. The considerations set out in section 2.11 on the interface between planning and pollution control therefore apply. These considerations will also apply in an analogous way to the abstraction licensing regime<sup>51</sup> regulating activities that take water from the water environment, and to the control regimes relating to works to, and structures in, on, or under a controlled water.

**2.19.6** The decision-maker will generally need to give impacts on the water environment more weight where a project would have adverse effects on the achievement of the environmental objectives established under the Water Framework Directive.

**2.19.7** The decision-maker should satisfy itself that a proposal has regard to the River Basin Management Plans and the requirements of the Water Framework Directive (including Article 4.7) and its daughter Directives, including those on priority substances and groundwater. The specific objectives for particular river basins are set out in River Basin Management Plans.

**2.19.8** The decision-maker should consider whether appropriate requirements should be attached to any development consent and/or planning agreements entered into to mitigate adverse effects on the water environment.

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<sup>51</sup> Abstraction licensing provisions are expected to change during 2010 through removal of licensing exemptions.

*Mitigation*

**2.19.9** The decision-maker should consider whether mitigation measures are needed for operational, construction and (possibly) decommissioning phases over and above any which may form part of the project application. A construction management plan may help codify mitigation at that stage.

**2.19.10** The risk of impacts on the water environment can be reduced through careful design to facilitate adherence to good pollution control practice. For example, designated areas for storage and unloading, with appropriate drainage facilities, should be clearly marked.

**2.19.11** The impact on local water resources can be minimised through planning and design for the efficient use of water, including water recycling.

**2.19.12** For mitigation measures on impacts affecting biodiversity, see section 2.12.

## **2.20 Air Quality**

**2.20.1** Ports can contribute to local air pollution problems since they bring together several sources of pollutants:

- large volumes of HGV traffic emit pollutants such as nitrogen oxides and particulates, with emissions exacerbated by congestion and stop-start driving conditions;
- emissions (especially sulphur dioxide) from ships entering the port and using coastal routes, estuaries and inland waterways can also be significant; and
- certain cargoes such as cements and aggregates can cause local dust pollution.

**2.20.2** The construction, operation and decommissioning phases can involve emissions to air which could lead to adverse impacts on human health, on protected species and habitats, or on the wider countryside. Impacts on protected species and habitats are covered in section 2.12 on biodiversity and geological conservation.

**2.20.3** Emissions of SO<sub>2</sub> from shipping are being tackled through the strengthening of emissions standards and the development of SO<sub>2</sub> Emissions Control Areas (SECAs). Emissions from road transport have been falling due to technical improvements in engine and catalyst design.



### *Applicant's assessment*

- 2.20.4** Where the project is likely to have adverse effects on air quality the applicant should undertake an assessment of the impacts of the proposed project as part of the Environmental Statement (ES).
- 2.20.5** The ES should describe:
- existing air quality affected by the proposed project;
  - any significant air emissions, their mitigation and any residual effects distinguishing between the construction and operation stages, and taking account of any significant emissions from any road traffic generated by the project. These should cover not only the absolute emission levels of the proposed project during construction and operation, after mitigation methods have been applied, but also the relative change in air quality from existing levels;
  - any relevant contribution of the air emissions to critical levels and loads for the protection of vegetation and ecosystems; and
  - any cumulative effects.

### *Guidance for the decision-maker*

- 2.20.6** Many activities involving air emissions are subject to pollution control. The considerations set out in section 2.11 on the interface between planning and pollution control therefore apply.
- 2.20.7** The decision-maker will generally need to give air quality considerations more weight where a project would have an impact on air quality inside, or adjacent to, an Air Quality Management Area (AQMA). But air quality considerations can also be important even where existing levels of air pollution are not sufficient to justify AQMA designation.
- 2.20.8** In all cases it is important that the decision-maker takes account of any relevant statutory air quality limits. Where these are likely to be exceeded as a consequence of the project the decision-maker must refuse consent, unless emissions can be mitigated to the extent that statutory requirements will be met<sup>52</sup>.

### *Mitigation*

- 2.20.9** The decision-maker should consider whether mitigation measures are needed both for operational and construction emissions over and above any which may form part of the project application. A construction management plan may help codify mitigation at that stage.

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<sup>52</sup> This should not be understood to preclude developments which will help reduce emissions in areas where air quality limits are already, or already likely to be, exceeded.



- 2.20.10** In doing so the decision-maker may refer to the conditions and advice in the Air Quality Strategy or any successor to it.
- 2.20.11** The mitigations identified in the transport section will help mitigate against the effects of air emissions from transport.
- 2.20.12** Ports are able, to an extent, to influence the modal share of inland connections to port facilities which may help to reduce local air pollution. For example, where peak concentrations of one or more pollutants have a high impact or risk exceedance of limits, vehicle booking systems may help to alleviate such effects as well as minimising congestion. The decision-maker should consider the extent to which the applicant intends to influence the modal share of inland connections to / from the ports and the robustness of these proposals. See transport assessment at section 2.17 above.
- 2.20.13** Local air pollution may also be abated through the provision of shore-side fixed electrical power to replace ships' generators while in port, this being known as 'cold-ironing'. Problems of frequency compatibility and technical standards are as yet unresolved, and the technology remains most appropriate for large vessels expected to be in berth for prolonged periods. There is possibility that supra-national instruments will require the use of cold-ironing in the future.
- 2.20.14** All proposals should either include reasonable advance provisions (such as ducting and spaces for sub-stations) to allow the possibility of future provision of cold-ironing infrastructure, or give reasons as to why it would not be economically and environmentally worthwhile to make such provision.
- 2.20.15** The decision-maker should consider each case objectively to determine whether provision of cold-ironing infrastructure (rather than provisions to allow this in the future) should be included in the development. This consideration should be based on the dwell time of vessels and technical compatibility of the ships intended to call at the port, as well as on the emissions and other impacts. Where supra-national instruments requiring the use of cold-ironing appear to be imminent, the decision-maker should take this into account.
- 2.20.16** Where cold-ironing infrastructure is proposed, account needs to be taken of the prospective impact on the National Grid of meeting the power demands and therefore the costs to electricity supply providers of doing so without impacts on reliability for other users.

## **2.21 Dust, odour, artificial light, smoke, steam and insects**

- 2.21.1** During the construction, operation and decommissioning of port infrastructure there is potential for the release of a range of emissions

such as odour, dust, steam, smoke, artificial light and infestation of insects. All have the potential to have a detrimental impact on amenity or cause a common law nuisance or statutory nuisance under Part III, Environmental Protection Act 1990. Note that pollution impacts from some of these emissions (e.g. dust, smoke) are covered in section 2.20 on air emissions.

- 2.21.2** Where applicants have requested the grant of a defence of statutory authority against nuisance claims, as described at 2.21.13ff below, it is important that the potential for these impacts be subject to thorough and detailed examination.
- 2.21.3** For nationally significant infrastructure projects of the type covered by this NPS, some impact on amenity for local communities is likely to be unavoidable. The aim should be to keep impacts to an acceptable minimum.

#### *Applicant's assessment*

- 2.21.4** The applicant should submit its assessment of the potential for insect infestation and emissions of odour, dust, steam, smoke and artificial light to have a detrimental impact on amenity, as part of the Environmental Statement.
- 2.21.5** In particular, the assessment provided by the applicant should describe:
- the type and quantity of emissions;
  - aspects of the development which may give rise to emissions during construction, operation and decommissioning;
  - premises or locations that may be affected by the emissions;
  - effects of the emission on identified premises or locations; and
  - measures to be employed in preventing or mitigating the emissions.
- 2.21.6** The applicant is advised to consult the relevant local planning authority and, where appropriate, the Environment Agency (EA) about the scope and methodology of the assessment.

#### *Guidance for the decision-maker*

- 2.21.7** Where applicants have requested the grant of a defence of statutory authority against nuisance claims, the decision-maker should satisfy itself that a thorough assessment of the potential for insect infestation and emissions of odour, dust, steam, smoke and artificial light to have a detrimental impact on amenity has been carried out.
- 2.21.8** The decision-maker should not grant development consent unless it is satisfied that all reasonable steps have been taken, and will be taken, to

minimise any detrimental impact on amenity from insect infestation and emissions of odour, dust, steam, smoke, and artificial light.

- 2.21.9** If the decision-maker does grant development consent for a project, it should consider whether there is a justification for all of the authorised project (including any associated development) being covered by a defence of statutory authority against nuisance claims. If it cannot conclude that this is justified it should reduce the scope of the defence or remove the defence entirely through a provision in the development consent or harbour order.
- 2.21.10** Where it believes it appropriate, the decision-maker may consider that a requirement should be placed in a development consent order, in order to secure certain mitigation measures.
- 2.21.11** In particular, the decision-maker should consider whether to require the applicant to abide by a scheme of management and mitigation concerning insect infestation and emissions of odour, dust, steam, smoke, artificial light from the development. The decision-maker should consider the need for such a scheme to reduce any loss to amenity which might arise during the construction, operation and decommissioning of the development. A construction management plan may help codify mitigation at that stage.

### *Mitigation*

- 2.21.12** The decision-maker should expect the mitigation measures for the project to be proportionate and reasonable; mitigation measures may include one or more of the following:
- **engineering:** prevention of a specific emission at the point of generation; control, containment and abatement of emissions if generated
  - **lay-out:** adequate distance between source and sensitive receptors; reduced transport or handling of materials
  - **administrative:** limiting operating times; restricting activities allowed on the site; implementing management plans.

### *Common law nuisance and statutory nuisance*

- 2.21.13** Applicants may include in their application, a request for the grant of a defence of statutory authority against nuisance claims. In particular, the application may make reference to the provisions of section 158 (1) and (2) of the Planning Act 2008, which confers a defence of statutory authority for the purpose of providing a defence in any civil or criminal proceedings for nuisance for which development consent has been granted. For the purpose of section 158 the term 'nuisance' takes its common law definition. This defence extends to proceedings in respect

of nuisances that are statutory nuisances under Part III, Environmental Protection Act 1990.

- 2.21.14** The availability of the defence of statutory authority means that it is very important that at the application stage of an NSIP, possible sources of nuisance and how they may be mitigated are considered by the decision-maker so that appropriate requirements can be included in any subsequent order granting development consent.
- 2.21.15** The decision-maker should note that this defence is subject to any contrary provision made by the decision-maker in any particular case in a development consent order (section 158(3)). The decision-maker can, therefore, disapply the defence of statutory authority in any particular case.
- 2.21.16** The Government believes that the decision-maker should consider carefully the justification for an applicant to ask for a statutory defence against nuisance claims to be maintained in a development consent order for the application in question.
- 2.21.17** For IPC decisions, the Government's policy is that where the IPC concludes that a development consent order should be made despite the potential for nuisance impacts, and where the IPC judges that it is possible that proceedings for nuisance might be brought against the applicant, then the development consent order should maintain a defence of statutory authority for the authorised project. However, a defence of statutory authority should not be maintained, if the effect of this would be that the applicant would not have to abide by statutory duties of care, or that the applicant would not have to make reasonable efforts to ensure that nuisance impacts did not occur.

## **2.22 Noise**

- 2.22.1** The impacts of excessive noise are wide ranging, with the most common being disturbance, that can lead to annoyance or loss of sleep. This affects quality of life, and may affect human health. It can also affect the use and enjoyment of areas of value such as quiet places and areas with high landscape quality
- 2.22.2** It is therefore considered essential that its impact be carefully considered and managed within the context of sustainable development. In this section, in line with current legislation, "noise" includes vibration.
- 2.22.3** Noise resulting from a proposed development can also have adverse impacts on wildlife and biodiversity. Noise effects of the proposed development on ecological receptors should be assessed by the decision-maker in accordance with the Biodiversity and Geological Conservation section of this NPS.

- 2.22.4** Factors which will determine the likely noise impact include:
- the inherent operational noise from the proposed development, and its characteristics;
  - the proximity of the proposed development to noise sensitive premises (including residential properties, schools and hospitals) and noise sensitive areas (including certain parks and open spaces);
  - the proximity of the proposed development to quiet or tranquil places and other areas that are particularly valued for their acoustic environment or landscape quality; and
  - the proximity of the proposed development to designated sites where noise may have an adverse impact on protected species or other wildlife.

*Applicant's assessment*

- 2.22.5** The nature and extent of the noise assessment should be proportionate to the likely noise impact.
- 2.22.6** The noise assessment should also consider noise impacts during the construction and commissioning phases of the development.
- 2.22.7** Where noise impacts are likely to arise from the proposed development, the applicant should include the following in the noise assessment:
- a description of the noise generating aspects of the development proposal including the identification of any distinctive tonal, impulsive or low frequency characteristics of the noise;
  - identification of noise sensitive premises and noise sensitive areas that may be affected;
  - the characteristics of the existing noise environment;
  - a prediction of how the noise environment will change with the proposed development, both temporarily during the construction and commissioning periods and permanently during the operating life of the proposed development;
  - an assessment of the effect of predicted changes in the noise environment on any noise sensitive premises and noise sensitive areas; and
  - a description of the measures that will be applied to control the effects of noise.

- 2.22.8** The noise impact of ancillary activities associated with the development, such as increased road and rail traffic movements, or other forms of transportation, should be considered.
- 2.22.9** Operational noise, with respect to human receptors, should be assessed using the principles of the relevant British Standards<sup>53</sup> and other applicable technical guidance. For the prediction, assessment and management of construction noise, reference should be made to the relevant British Standards<sup>54</sup> which also give examples of mitigation strategies for construction noise.
- 2.22.10** The applicant should consult the Environment Agency and Natural England, or the Countryside Council for Wales, as necessary and in particular with regard to assessment of noise on protected species or other wildlife. The results of any noise surveys and predictions may inform the ecological assessment. The seasonality of potentially affected species in nearby sites may also need to be taken into account.

*Guidance for the decision-maker*

- 2.22.11** The decision-maker should expect the noise assessment to have been undertaken, where appropriate, which considers noise (and vibration) impacts during the construction, commissioning and operational phases of the development, as well as from any associated transportation infrastructure.
- 2.22.12** The decision-maker should expect the project to demonstrate good design through quiet plant selection (where available), containment of noise within buildings wherever possible, optimisation of plant layout to minimise noise emissions and – where possible – the use of landscaping, bunds or noise barriers to reduce noise radiation to outlying areas.
- 2.22.13** When determining the application the decision-maker should be satisfied that the proposals will:
- avoid significant adverse impacts on health and quality of life from noise<sup>55</sup>;
  - mitigate and minimise other adverse impacts on health and quality of life from noise; and
  - where possible, contribute to improvements to health and quality of life through the effective management and control of noise.

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53 For example, for industrial noise, BS 4192: 1997 – Method for rating industrial noise affecting mixed residential and industrial areas, and BS 8233: 1999 – Sound insulation and noise reduction for buildings.

54 BS 5228 2009 Parts 1 and 2 – Code of practice for noise and vibration control on construction and open sites. It should be noted that the 2009 version of this standard is awaiting adoption under the relevant Act as an approved Code of Practice.

55 This objective would normally be met, for example, by avoiding any significant loss of amenity from noise at nearby noise sensitive receptors.

- 2.22.14** The decision-maker should not grant development consent unless it is satisfied that all reasonable steps have been taken, and will be taken, to minimise noise impacts.
- 2.22.15** When preparing the development consent order, the decision-maker should consider including measurable requirements (for example, limits on noise levels) or specify the mitigation measures to be required so as to ensure that noise levels do not exceed those on which the decision-maker's decision was based.

### *Mitigation*

- 2.22.16** The decision-maker should consider whether mitigation measures are needed both for operational and construction noise over and above any which may form part of the project application. In doing so the decision-maker may refer to the guidance in Annexes 4 and 5 of PPG24: Planning and Noise, or any successor to it.
- 2.22.17** Mitigation measures for the project should be proportionate and reasonable and may include one or more of the following:
- **engineering:** reduction of noise at point of generation (e.g. by using quiet plant and machinery and/or quiet methods of working); and containment of noise generated (e.g. by insulating/screening buildings which house machinery and/or providing landscaping or purpose built barriers for external sources around the site)
  - **lay-out:** adequate distance between source and noise-sensitive receptors; incorporating good design to minimise noise radiation through screening by natural barriers, or other buildings
  - **administrative:** limiting operating times of source; restricting activities allowed on the site; specifying acceptable noise limits; and taking into account seasonality of wildlife in nearby designated sites.
- 2.22.18** In certain situations, and only when all other forms of noise mitigation have been exhausted, it may be appropriate for the decision-maker to consider requiring noise mitigation through improved sound insulation to dwellings, or in extreme cases, compulsory purchase of affected properties, as a means of consenting otherwise unacceptable development.

## **2.23 Landscape and Visual Amenity**

- 2.23.1** The landscape and visual effects of proposed projects will vary on a case by case basis according to the type of development, its location and the landscape setting of the proposed development. In this context,



references to landscape should be taken as covering seascape and townscape, where appropriate.

- 2.23.2** Port development can sometimes have a negative impact on the characteristics and visual amenity of the landscape. This can be a particular problem where the local area is dependent on an acknowledged tourist activity destination and/or important for recreation (see 2.9.1). The impact can be the result of the physical character of the port development as well as its introduction of light pollution and noise to areas that may otherwise have been tranquil.

#### *Applicant's assessment*

- 2.23.3** The applicant should carry out a landscape and visual assessment and report it in the ES. A number of guides have been produced to assist in addressing landscape issues<sup>56</sup>. The landscape and visual assessment should include reference to any landscape character assessment and associated studies, as a means of assessing landscape impacts relevant to the proposed project. The applicant's assessment should also take account of any relevant policies based on these assessments in local development documents in England and local development plans in Wales<sup>57</sup>.
- 2.23.4** The applicant's assessment should include the effects during construction of the project and the effects of the completed development and its operation on landscape components and landscape character.
- 2.23.5** The assessment should include the visibility and conspicuousness of the project during construction and of the presence and operation of the project and potential impacts on views and visual amenity. This should include any light pollution effects including on local amenity, rural tranquillity and nature conservation.

#### *Guidance for the decision-maker*

##### *Landscape impact*

- 2.23.6** Landscape effects depend on the existing character of the local landscape, its current quality, how highly it is valued and its capacity to accommodate change. All of these factors need to be considered in judging the impact of a project on landscape. Projects need to be designed carefully, taking account of the potential impact on the landscape. Having regard to siting, operational and other relevant constraints, the aim should be to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate.

<sup>56</sup> Landscape Institute and Institute of Environmental Management and Assessment (2002, 2nd edition): Guidelines for Landscape and Visual Impact Assessment; and Land Use Consultants (2002): Landscape Character Assessment – Guidance for England and Scotland.

<sup>57</sup> For an example of guidance see The European Landscape Convention: English Heritage Action Plan for Implementation, published February 2009, [www.english-heritage.org.uk/characterisation](http://www.english-heritage.org.uk/characterisation).



*Development proposed within nationally designated areas*

**2.23.7** National Parks, the Broads and Areas of Outstanding Natural Beauty (AONB), have been confirmed by the Government as having the highest status of protection in relation to landscape and scenic beauty. Each of these designated areas has specific statutory purposes which help ensure their continued protection and which the decision-maker has a statutory duty to have regard to in its decisions<sup>58</sup>. The conservation of the natural beauty of the landscape and countryside should be given great weight by the decision-maker in deciding on applications for development consent in these areas.

**2.23.8** Nevertheless, the decision-maker may, exceptionally, grant consent to nationally significant infrastructure projects in these areas if the project is demonstrated to be in the public interest. Consideration of applications should therefore include an assessment of:

- the need for the development, including in terms of any national considerations<sup>59</sup>, and the impact of consenting, or not consenting it, upon the local economy;
- the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and
- any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

**2.23.9** The decision-maker should ensure that any development consented in these designated areas should be carried out to high environmental standards through the application of appropriate requirements where necessary.

*Developments outside nationally designated areas which might affect them*

**2.23.10** The duty on the decision-maker to have regard to the purposes of designated areas also applies when considering applications for projects outside the boundaries of these areas, where the project may have an impact within them. Such projects should be designed sensitively given the various siting, operational, and other relevant constraints.

*Developments in other areas*

**2.23.11** Outside nationally designated areas, there are local landscapes that may be highly valued locally and protected by local designation. Where a local development document in England or a local development plan in Wales

<sup>58</sup> For an explanation of the duties which will apply to the IPC, see “Duties on relevant authorities to have regard to the purposes of National Parks, AONBs and the Norfolk and Suffolk Broads” at [www.defra.gov.uk/rural/documents/protected/npaonb-duties-guide.pdf](http://www.defra.gov.uk/rural/documents/protected/npaonb-duties-guide.pdf)

<sup>59</sup> National considerations should be understood to include the national need for and benefits of the infrastructure set out in part 1 as well as the contribution of the infrastructure to the national, and in some cases regional, economy.

has policies based on landscape character assessment, these should be paid particular attention.

**2.23.12** However, local landscape designations should not be used in themselves as reasons to refuse consent, as this may unduly restrict acceptable development.

**2.23.13** The decision-maker should consider whether the project has been located and designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to minimise harm to the landscape, including by all reasonable mitigation.

#### *Visual impact*

**2.23.14** The decision-maker will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the development. Coastal areas are particularly vulnerable to visual intrusion because of the potential high visibility of development on the foreshore, on the skyline and affecting views along stretches of undeveloped coast.

**2.23.15** It may be helpful for applicants to draw attention, in the supporting evidence to their applications, to any examples of existing permitted infrastructure they are aware of with a similar magnitude of impact on sensitive receptors. This may assist the decision-maker in judging the weight it should give to the assessed visual impacts of the proposed development.

#### *Mitigation*

**2.23.16** Reducing the scale of a project can help to mitigate the visual and landscape effects of a proposed project. However, reducing the scale or otherwise amending the design of development may result in a significant operational constraint and reduction in function, making the project unfeasible. There may, however, be exceptional circumstances, where mitigation could have a very significant benefit and warrant a small reduction in function. In these circumstances, the decision-maker may decide that the benefits of the mitigation to reduce the landscape effects outweigh the marginal loss of function.

**2.23.17** Within a defined site, adverse landscape and visual effects may be minimised through appropriate siting of infrastructure within that site, design including colours and materials, and landscaping schemes, depending on the size and type of proposed project. Materials and designs of buildings should always be given careful consideration

## 2.24 Historic environment

- 2.24.1** The construction, operation and decommissioning of ports could adversely affect the historic environment.
- 2.24.2** The historic environment includes all aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, and deliberately planted or managed flora. Those elements of the historic environment – buildings, monuments, canals, sites or landscapes – that have significance due to their historic, archaeological, architectural or artistic interest are called ‘heritage assets’.
- 2.24.3** Some heritage assets have a level of interest that justifies official designation. The purpose of designation is to ensure that our most important heritage assets are protected and conserved for the benefit of this and future generations.
- 2.24.4** Categories of internationally and nationally designated heritage assets include:
- World Heritage Sites;
  - Scheduled Monuments;
  - Protected Wreck Sites<sup>60</sup>;
  - Listed Buildings (Grades I, II\* and II);
  - Registered Parks and Gardens (Grades I, II\* and II);
  - Registered Historic Battlefields (England only);
  - Conservation Areas;
  - Sites designated under the Protection of Military Remains Act 1986; and
  - Registered Historic Landscapes (Wales only).
- 2.24.5** Due to the discretionary approach taken to the ‘scheduling’ of monuments and the statutory limitations on what can be designated as a monument, many heritage assets with significant archaeological interest are not designated at present. Non-designated assets of archaeological interest equal in significance to that of Scheduled Monuments should be

<sup>60</sup> Areas designated under s.1 Protection of Wrecks Act 1973 are nationally designated heritage assets, but the control of works on such sites is outside the scope of the Planning Act 2008. Where development is likely to affect such a site the developer will need to apply to the Secretary of State for Culture, Media and Sport for a licence, and further advice should also be obtained by the developer from the respective national heritage agencies in Wales (CADW) and in England (English Heritage). In respect of sites in Wales, the developer would need to apply to the Welsh Ministers for a licence. Shipwrecks designated under section 2 (dangerous or hazardous wrecks) have access controlled through a licence system operated by the Maritime and Coastguard Agency.

treated by applicants and the decision-maker as if they were Scheduled Monuments<sup>61</sup>.

#### *Applicant's assessment*

- 2.24.6** The applicant should provide as part of the Environmental Statement a description of the significance<sup>62</sup> of the heritage assets affected and the contribution of their setting to that significance. This should set out the information that has been considered and the expertise that has been consulted. As a minimum the relevant Historic Environment Record<sup>63</sup> and any relevant historic landscape characterisation should have been consulted and the assets themselves should have been assessed.
- 2.24.7** Evaluation is required where there is a need to discover the extent and nature of significance in order to inform a decision. Where a development site includes heritage assets with an archaeological interest, the applicant should carry out appropriate desk-based assessment as part of any application for consent. In some circumstances, it may also be necessary for the applicant to undertake field-based surveys where there is a significant risk of disturbance to potential unknown archaeology from the proposed development. In these circumstances it will be necessary to determine whether field surveys are necessary at the EIA stage and the type of field survey which should be employed. They should refer to the results of these evaluations when determining the design of the proposed development. Applicants should deposit a copy of the outcomes of such evaluations with the relevant Historic Environment Record.
- 2.24.8** The possibility of damage to buried features from underwater disposal of dredged material should be taken into account.
- 2.24.9** The decision-maker should not accept applications for consent where the extent of the impact of the proposed development on the significance of any heritage assets affected cannot be understood from the application and supporting documents.

#### *Guidance for the decision-maker*

- 2.24.10** In considering applications, the decision-maker should seek to identify and assess the significance of any heritage asset that may be affected by the proposed development, including through development within its setting, drawing on the evidence provided by any relevant designation

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61 Advice and information about the significance of known, but non-designated heritage assets with archaeological interest may be obtained from County Archaeologists and historic environment records, respectively. For areas subject to development outwith local authority planning boundaries (below mean low water) all such requests for information are to be directed to the respective national heritage agencies.

62 Its value to people now and in the future because of its heritage interest.

63 Historic Environment Records (HERs) are information services maintained by local authorities and National Park Authorities with a view to providing access to resources relating to the historic environment of an area for public benefit and use. Typically, they comprise databases linked to a Geographic Information System (GIS), and associated reference material, together with dedicated staffing resource. Contact details for HERs can be found on the Heritage Gateway ([www.heritagegateway.org.uk/](http://www.heritagegateway.org.uk/)).

records, the relevant Historic Environment Record, the assets themselves, and the outcome of consultations with interested parties and specialist advice. The applicant's assessment of the historic significance of the heritage assets affected by the development should also be considered by the decision-maker, alongside the outcome of any consultation with the local community and expert advice from professional experts and/or statutory consultees as required. This should include the results of any desk-based or field evaluations undertaken by the applicant.

**2.24.11** In considering the significance of any heritage assets affected by the proposed development, the decision-maker should take into account the particular nature of the interest in the assets and the value that they hold for this and future generations. This understanding should be used to avoid or minimise conflict between conservation of that significance and proposals for development.

**2.24.12** The decision-maker should take into account the desirability of enhancing the significance of heritage assets and securing their conservation for the longer term.

**2.24.13** The decision-maker should not accept material harm to or removal of significance in relation to a heritage asset, unless it can be demonstrated that the material harm or removal of significance is outweighed by the wider social, economic and environmental benefits that will be delivered by the proposed development. In doing so the decision-maker should be guided by the following principles:

- the greater the harm to the significance of a heritage asset, the greater the justification that will be needed for any loss; and
- the more significant the heritage asset, the greater the presumption in favour of its conservation;
- material loss of heritage assets of the highest significance<sup>64</sup> should be wholly exceptional.

**2.24.14** In considering the significance of heritage assets the decision-maker should bear in mind that not all elements of a World Heritage Site or Conservation Area will necessarily contribute to its significance. Those elements that do contribute to the significance should be considered as designated assets in themselves (whether subject to separate statutory designation or not). When considering applications for development, the decision-maker should take into account the significance of such individual elements and their contribution to the significance of the World Heritage Site or Conservation Area as a whole.

<sup>64</sup> Including Scheduled Monuments, Protected Wreck Sites, Grade I and II\* Listed Buildings, Registered Battlefields, Registered Parks and Gardens, and non-designated assets of archaeological interest equal in significance to that of Scheduled Monuments.

- 2.24.15** When considering applications for development within the setting of a heritage asset, the decision-maker should treat favourably applications that preserve those elements of the setting that enhance the significance of the asset. When considering applications that do not do this, the decision-maker should weigh any loss of enhancement of the asset against the wider benefits of the application. The greater the negative impact on the significance of the asset, the greater the benefits that will be needed to justify approval.
- 2.24.16** Where an aspect of a heritage asset's setting does not positively contribute to its significance, the decision-maker should take into account the desirability of enhancing or better revealing the significance, including through high quality design of new development.

#### *Recording*

- 2.24.17** A documentary record of our past is not as valuable as retaining the asset. Where consent for development would result in a heritage asset's destruction, the ability to record evidence of the asset should not be a factor in deciding whether consent should be given.
- 2.24.18** Where a decision has been made that will result in the loss of the whole or a material part of a heritage asset's significance, the decision-maker should ensure that developers maximise opportunities to advance understanding of the asset's significance before this is lost. Developers should publish the outcomes of such investigations and the advancement in understanding that those results bring. They should deposit copies of the reports with the relevant Historic Environment Record. They should also offer the archive generated to a local museum or other public depository.
- 2.24.19** Where appropriate, the decision-maker should impose requirements on a consent that such work is carried out before commencement of the development and should ensure that it is implemented in accordance with a written scheme of investigation.
- 2.24.20** Where the decision-maker considers there to be a high probability that a development site may include as yet undiscovered heritage assets with archaeological interest, the decision-maker should ensure that appropriate procedures are in place for the identification and treatment of such assets discovered during construction.

## Social Impacts

### 2.25 Open space, green infrastructure, sport and recreation

**2.25.1** The Government's policy is to ensure there is adequate provision of high quality open space,<sup>65</sup> green infrastructure,<sup>66</sup> and sports and recreation facilities to meet the needs of local communities<sup>67</sup>. Open spaces, sports and recreational facilities all help to underpin people's quality of life and have a vital role to play in promoting healthy living. Green infrastructure, in particular, will also play an increasingly important role in mitigating and adapting to the impacts of climate change.

**2.25.2** Land should be used efficiently and the re-use of previously developed land and buildings prioritised for new development. Although this may not be possible for some forms of infrastructure it can make a major contribution to sustainable development by reducing the amount of countryside and undeveloped greenfield land that needs to be used. Where networks of green infrastructure have been identified in development plans, they should normally be protected from development, and, where possible, strengthened by or integrated within it.

**2.25.3** Green Belts, defined in a local planning authority's development plan<sup>68</sup>, are situated around certain cities and large built-up areas. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the most important attribute of Green Belts is their openness. Green Belt land can play a positive role in providing access to sport and recreation facilities or access to the open countryside.

#### *Applicant's assessment*

**2.25.4** The ES should identify existing and proposed land-uses near the project, any effects of replacing an existing development or use of the site with the proposed project or preventing a development or use on a neighbouring site from continuing. Applicants may also be able to assess any effects of precluding a new development or use proposed in the development plan.

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65 Open space is defined in the Town and Country Planning Act 1990 as land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground. However, in applying the policies in this section, open space should be taken to mean all open space of public value, including not just land, but also areas of water such as rivers, canals, lakes and reservoirs which offer important opportunities for sport and recreation and can also act as a visual amenity.

66 Green infrastructure refers to a network of multi-functional green space, and other environmental features, which support the natural and ecological processes in both rural and urban areas. It includes gardens, wetlands, rivers, canals, parks, community forests, trees and green roofs.

67 For Wales relevant guidance is set out in the Welsh Assembly Government's Technical Advice Note 16: Sport, Recreation and Open Space.

68 Or else so designated under The Green Belt (London and Home Counties) Act 1938.



- 2.25.5** Applicants should seek to re-use previously developed land and buildings for new development. However, where such sites have significant biodiversity or geological interest of recognised local importance applicants should aim to retain this interest or incorporate it into any development of the site.
- 2.25.6** Applicants will need to consult the local community on their proposals to build on open space, green infrastructure, sports or recreational buildings and land. Applicants may want to take the opportunity to provide new or additional open space, green infrastructure, sport or recreation facilities, to substitute for any such similar losses as a result of their proposal. Applicants should use any local authority assessment or, if there is none, provide an independent assessment to show whether the existing open space, sports and recreational buildings and land is surplus to requirements.
- 2.25.7** The IPC should expect the LPA, during any pre-application discussions with the applicant, to identify any concerns it has about the impacts of the application on land-use, having regard to the development plan and relevant applications.
- 2.25.8** Applicants should seek to avoid the loss of the best and most versatile agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification) and preferably use land in areas of poorer quality (grades 3b, 4 and 5) except where this would be inconsistent with other sustainability considerations. Applicants should also identify any effects on soil quality taking account of any mitigation measures proposed.
- 2.25.9** The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved except in very special circumstances – see 2.25.19 below.
- 2.25.10** Applicants should therefore determine whether their proposal, or any part of it, is within an established Green Belt and if it is whether their proposal may be inappropriate development.
- 2.25.11** However, infilling or redevelopment of major developed sites in the Green Belt, if identified as such by the local planning authority, may be suitable for some forms of nationally significant infrastructure and applicants should refer to the relevant criteria<sup>69</sup> on Green Belts. Indeed, they may help to secure jobs and prosperity without further prejudicing the Green Belt or even offer the opportunity for further environmental improvement.

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<sup>69</sup> See Annex C to Planning Policy Guidance 2: Green belts or any successor to it.

*Guidance for the decision-maker*

- 2.25.12** The decision-maker must take into account any comments made with regard to the impacts on existing land use, including areas of open space and green infrastructure, sport and recreation facilities, from the statutory bodies and the consultation with the local community.
- 2.25.13** The decision-maker should ensure that applicants have prioritised the reuse of previously developed land and buildings but where this is not possible to have made efficient use of land.
- 2.25.14** The decision-maker should ensure that applicants do not site their scheme on the best and most versatile agricultural land without justification. The decision-maker should give little weight to the loss of agricultural land in grades 3b, 4 and 5, except in areas where particular agricultural practices may themselves contribute to the quality and character of the environment or the local economy. The decision-maker should also take into account any loss of high quality soil and whether the proposal gives rise to any risk of soil contamination.
- 2.25.15** In considering the impact on maintaining coastal recreation sites and features the decision-maker should expect applicants to have taken advantage of opportunities to maintain and enhance access to the coast. In doing so the decision-maker should consider the implications for development of the creation of a continuous signed and managed route around the coast, as proposed in the Marine and Coastal Access Bill.
- 2.25.16** The decision-maker should not grant consent for development on existing open space, sports and recreational buildings and land unless an assessment has been undertaken either by the local authority or independently, which has clearly shown the open space or the buildings and land to be surplus to requirements or the decision-maker determines that the benefits of the project outweigh the potential loss of such facilities, taking into account any positive proposals made by the applicants to provide new, improved or compensatory land or facilities. The loss of playing fields should only be allowed where applicants can demonstrate that they will be replaced with facilities of equivalent or better quantity or quality in a suitable location.
- 2.25.17** The regional Leaders' Board, the Regional Development Agency (RDA) and the Government Office (GO) may be able to advise the decision-maker on the regional significance of any use or development which is replaced, prevented or precluded. Similarly the GO and/or Government Department in England and the Welsh Assembly Government may be able to advise on any national significance of what is replaced, prevented or precluded.

- 2.25.18** Where the project conflicts with a proposal in a development plan, the decision-maker should take account of the stage which the regional strategy or development plan document in England or local development plan in Wales has reached in deciding what weight to give to the plan. The closer the regional strategy is to being agreed by the Secretary of State or the development plan document in England or local development plan in Wales is to being adopted by the LPA, the more weight which can be attached to it.
- 2.25.19** When located in the Green Belt, port infrastructure projects may comprise ‘inappropriate development’<sup>70</sup>. Inappropriate development is by definition harmful to the Green Belt and there is a presumption against it. The decision-maker will need to assess whether there are very special circumstances to justify inappropriate development. Very special circumstances will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the decision-maker will attach substantial weight to the harm to the Green Belt when considering any application.
- 2.25.20** In Wales, ‘green wedges’ may be designated locally<sup>71</sup>. These enjoy the same protection as Green Belt in Wales and the decision-maker should adopt a similar approach.

### *Mitigation*

- 2.25.21** Applicants can minimise the direct effects of a project on the existing use of the proposed site, or proposed uses near the site by the application of good design principles, including the layout of the project.
- 2.25.22** The decision-maker should consider imposing requirements to ensure the connectivity of the green infrastructure network is maintained and, any necessary works are undertaken to mitigate any adverse impact and, where appropriate, to improve that network and other areas of open space.
- 2.25.23** The decision-maker should also consider whether mitigation of any adverse effects on green infrastructure or open space is adequately provided for by means of any planning obligations entered into between the applicant and a LPA or LPAs to, for example, exchange land and provide for appropriate management and maintenance agreements. Any exchange land should be at least equal in size, usefulness, attractiveness, quality and accessibility.
- 2.25.24** Where a project has a sterilising effect on land-use, there may be scope for this to be mitigated through, for example, using the land for

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<sup>70</sup> Defined in section 3 of PPG2: Green Belts

<sup>71</sup> See section 2.6 of Planning Policy Wales

nature conservation or wildlife corridors or for parking and storage in employment areas.

**2.25.25** Rights of way are an important recreational facility for walkers, cyclists and horse riders. The decision-maker should expect applicants to take appropriate mitigation measures to address adverse effects on coastal access, national trails and other rights of way. Where this is not the case the decision-maker should consider what appropriate mitigation requirements might be attached to any grant of development consent.

DfT  
9 November 2009

# Glossary

The acronyms, abbreviations and terms listed below are either used in this policy statement, or may be found elsewhere in related links

AONB	Area of Outstanding Natural Beauty
AoS	Appraisal of Sustainability
AQMA	Air Quality Management Area
BS	British Standard
CNI	Critical National Infrastructure
CPNI	Centre for the Protection of National Infrastructure
[D]CLG	Department for Communities and Local Government (formerly ODPM)
DEFRA	Department for the Environment, Food and Rural Affairs
DfT	Department for Transport
EA	Environment Agency
EIA	Environmental Impact Assessment
EP	Environmental Permitting
ES	Environmental Statement
EU	European Union
FEPA	Food & Environment Protection Act 1985
FRA	Flood Risk Assessment
GHG	Greenhouse Gases
GO	Government Office
HGV	Heavy Goods Vehicle
hi-cube	A 9ft6in high container
HRO, HEO	Harbour Revision/Empowerment Order
IPC	Infrastructure Planning Commission
IROPI	Imperative Reasons of Overriding Public Interest
JNCC	Joint Nature Conservation Committee

LPA	Local Planning Authority
MCA	Maritime and Coastguard Agency
MCZ	Marine Conservation Zone
MDS, MDST	MDS Transmodal (consultants)
MFA	Marine & Fisheries Agency
MMO	Marine Management Organization
MOD	Ministry of Defence
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
ODPM	Office of the Deputy Prime Minister
PPG	Planning Policy Guidance
PPS	Planning Policy Statement
RDA	Regional Development Agency
ro-ro	roll-on/roll-off (freight and/or passenger ferry transport)
SAC	Special Area of Conservation
SCI	Site of Community Importance
SECA	SO <sub>2</sub> Emissions Control Area (at sea)
SFRA	Strategic Flood Risk Assessment
SO <sub>2</sub>	Sulphur Dioxide
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
SuDS	Sustainable Drainage Systems
TCPA	Town & Country Planning Act 1990 (as amended)
teu	twenty-foot equivalent unit (standard measure of container volume; forty-foot containers {2 teu each} are increasingly prevalent)
TRANSEC	Transport Security Division (DfT)
Transshipment	transfer of goods (usually containers) from one ship to another through a port
TSO	The Stationery Office
W10	rail loading-gauge allowing the use of 9'6" containers
WHS	World Heritage Site









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